UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

NOTICE TO ATTORNEYS: The following instructions are provided for filing a civil action in this court. For further procedural information, the Clerk's Office may be contacted at any of the following locations:

Clerk, U.S. District Court
11 Elmwood Avenue, Room 506
P.O. Box 945
Burlington, VT 05402-0945
802-951-6301

Clerk, U.S. District Court
Federal Building, Room 201
204 Main Street
Brattleboro, VT 05302
802-254-0250

Clerk, U.S. District Court
151 West Street, Room 204
P.O. Box 607
Rutland, VT 05702-0607
802-773-0245

Counsel should note that these Local Rules and other additional information are also available from the district court website:

http://www.vtd.uscourts.gov

CIVIL PROCEDURE SUMMARY

Note: Civil cases must be filed with the Clerk's Office prior to issuance of the notice of lawsuit and request for waiver of summons, waiver of service of summons, the complaint or summons.

A civil action is instituted by filing the following documents at any Clerk's Office location: (1) the original **complaint** and a filing fee of **$350**, or a motion and affidavit to proceed *in forma pauperis*; (2) **Civil Cover Sheet** [Form JS 44]; and (3) enough copies of the complaint and the **Notice of Lawsuit and Request for Waiver of Service** [Form 1A or AO 398] and **Waiver of Service of Summons** [Form 1B or AO 399] to serve each defendant. When sent to a defendant, the Notice of Lawsuit and Waiver of Service forms must be accompanied by a means for cost-free return of the forms back to the plaintiff after signing. Executed Waiver of Service of Summons forms must be filed with the Clerk's Office by the plaintiff.

A **Summons** [Form AO 440] will be executed by the Clerk's Office and returned to the plaintiff **if** presented at the time the action is commenced, or upon request at a later time. Counsel are reminded, however, that the purpose of Fed. R. Civ. P. 4(d) as amended December 1, 1993, is to minimize the cost of serving the complaint, preferably through the use of the Notice of Lawsuit and Waiver of Service procedures. A **Third-Party Summons** [Form AO 441] will be executed by the Clerk's Office and returned to a third-party plaintiff upon compliance with Fed. R. Civ. P. 14.

All forms [AO 398, 399, 440, 441 and JS 44] are available from the Clerk's Office or the Court's official website and may be reproduced locally.

SERVICE OF COMPLAINT AND SUMMONS

Fed. R. Civ. P. 4 authorizes service of the complaint by anyone not a party to the case and at least 18 years of age. At plaintiff's request, the court may direct that service be made by a United States Marshal, Deputy United States Marshal, or other person or officer specially appointed by the court. The court must make such an appointment in the following circumstances:

(1) the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915; or

(2) the plaintiff is authorized to proceed as a seaman under 28 U.S.C. § 1916.

The Clerk's Office will file the complaint, conform any copies necessary for service, sign, date, and seal the summonses (one original for each party to be served) and return them to the plaintiff or the plaintiff's counsel for service under Fed. R. Civ. P. 4.

A copy of the complaint must be delivered to each defendant (by first-class mail, postage prepaid or by other reliable means) together with two copies of the Notice of Lawsuit and Waiver of Service forms, conforming substantially to Forms 1A and 1B in the Appendix of Forms to the Rules of Civil Procedure, and a self-addressed, stamped envelope or other prepaid means of compliance in writing. If completed forms are not received by the sender within 30 days after the date of mailing — 60 days from that date if the defendant addressed is outside any judicial district of the United States — the plaintiff should arrange for *personal* service on the defendant. The court will order the

defendant to pay the costs of personal service where good cause for the delay in acknowledging service is not shown. In such a case, the defendant must also pay the costs of any motion required to collect the costs of service, including reasonable attorney's fees.

After being returned to the sender, the original Waiver of Service of Summons or any other return of service must be filed with the Clerk's Office.

Service upon a federal officer or agency is made by delivering a copy of the summons and the complaint to the United States Attorney for the District of Vermont and by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C., and to such officers or agencies as may be involved in the action.

A defendant who timely returns a waiver must answer the complaint within 60 days after the date on which the request for waiver of service was sent — or 90 days after that date if the defendant addressed was outside any judicial district of the United States. A defendant who does not waive service has 20 days to answer after being served with the summons and complaint, exclusive of the day of service — except that the United States or an Officer or Agency thereof has 60 days to answer. [Fed. R. Civ. P. 12(a)(3)]. Counsel are reminded to complete the appropriate number of days in the blank portion of the summons form.

After filing, all cases are governed by the attached local rules and the Federal Rules of Civil Procedure.

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I. SCOPE OF THE RULES

1.1 General Rules

(a) Title and Citation. These rules shall be known as the "Local Rules of the United States District Court for the District of Vermont." Civil local rules may be cited as "L.R. ____." Criminal local rules may be cited as "L.Cr.R. ____."

(b) Effective Date. These rules become effective as revised on March 1, 2005.

(c) Relationship to Prior Rules. These local rules supersede all previous rules and related general orders promulgated by this court. They apply to actions filed after the effective date. The former local rules apply to all pending actions, except when the court determines that justice requires application of these local rules.

1.2 Definitions

(a) Judge Defined. In these rules, "judge" means a judge of this court, a judge assigned to duties in this court, or a magistrate judge of this court performing duties authorized by law or by the judges of this court.

(b) Clerk Defined. In these rules, "clerk" means the clerk of this court or any deputy clerks and assistants authorized by the clerk to perform any functions specified.

II. COMMENCEMENT OF ACTION, SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

4.1 Litigation Expenses

The granting of *in forma pauperis* status waives only the costs of filing and serving the complaint. It does not waive the responsibility to pay the expenses of litigation which are not waived by 28 U.S.C. §§ 1825 and 1915.

5.1 Format of Filings

(a) Size and Format. Filings and attachments must conform to these specifications:

(1) be on 8 ½ x 11 inch paper;
(2) be plainly legible, whether typed, handwritten, or duplicated;
(3) have no less than one (1) inch margins;
(4) be no less than 12 point font;
(5) be consecutively numbered;
(6) be double-spaced except for quoted material;
(7) use footnotes sparingly;
(8) be stapled or otherwise attached but *not* bound or submitted in a binder that makes scanning the document unmanageable.

(b) Identification of Attorney and Party. The attorney's name, address and telephone number must appear below the signature line on all filings. Due to privacy concerns, counsel are *no longer required* to include a Federal Bar identification number on documents submitted for filing.

(c) Identification of Filings. All filings must contain:

(1) the caption of the case;
(2) the proper case number;
(3) a brief title describing the content of the filing;

(4) the name of the party on whose behalf it is filed; and
(5) at least one original signature, if accompanying signatures are in facsimile form.

(d) Confidential and Sensitive Information. In compliance with the E-Government Act of 2002, counsel and parties to a case are advised that various types of sensitive or confidential information should *not* be included in documents submitted for filing with the court and that responsibility for redacting sensitive or confidential information rests with counsel and the parties to litigation. Sensitive and confidential information includes the following types of items:

(1) Social Security numbers;
(2) financial account numbers;
(3) names of minor children;
(4) dates of birth; and
(5) proprietary or trade secret information.

When submitting redacted documents, counsel have the option of filing along with the redacted document *either*:

(6) a non-redacted document which is placed under seal; *or*
(7) a corresponding "reference list" which identifies the redacted information. The reference list would be filed under seal.

(e) Facsimile Filings. The Clerk's Office does not accept filings by facsimile without prior oral or written authorization by the court. If authorized, the filing date will be the date the transmission was *adequately received* by the Clerk's Office or chambers. The original document *must* also be filed within 3 business days.

(f) Affidavits. An affidavit must identify the filing it relates to by indicating that document's title.

(g) Removed Actions. This rule does not apply to papers filed in removal actions prior to transmission of the record to this court.

(h) Noncompliance. Filings not conforming to the above specifications — such as letters — will be treated as correspondence and will *not* be filed or made part of the official court file unless directed by the court.

5.2 Judicial Conflicts

(a) Recusal. The Clerk's Office maintains a current list of companies in which each judge of this court, individually or as a fiduciary (including a judge's spouse or minor children who reside with the judge) holds a financial interest in, thereby requiring recusal. During initial case assignment, the Clerk's Office makes every effort to avoid known conflicts. Parties or counsel wishing to confirm that no financial conflict-of-interest exists in cases as assigned may obtain a copy of the Court's recusal list upon *written* request to the Clerk of Court.

(b) Corporate Disclosure. All non-governmental corporate parties to any action pending before this court are hereby required to file a statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates that have issued shares of ownership to the public. The statement shall be filed with the party's first appearance and shall be supplemented within a reasonable time of any change in the information. The purpose of this requirement is to assist the court in making a determination whether a conflict-of-interest exists between any of the disclosed corporate entities that would disqualify the judge from the case.

III. PLEADINGS AND MOTIONS

7.1 Motions in General

(a) Written Motions and Arguments.

(1) Title. A motion will not be considered unless it contains the word "motion" in the title.

(2) Memorandum in Support. All written motions, other than those presented during trial, must be accompanied by or contain a memorandum of law containing a concise statement of the legal contentions and authorities relied on in support of the motion. A copy of each motion and memorandum must be served on all opposing parties.

(3) Opposition. Opposition to any motion except for dispositive motions, such as a motion to dismiss or a motion for summary judgment, must be filed no more than 10 days after the motion is served. Opposition to a motion for summary judgment or a motion to dismiss under Fed.R.Civ.P. 12 must be filed no more than 30 days after the motion is served. These deadlines may be extended by order of the judge to whom the case is assigned.

(4) Length of Memorandum. Memoranda in support of or in opposition to a nondispositive motion must not exceed 15 pages, excluding exhibits and attachments. Memoranda in support of, or in opposition to, a dispositive motion must not exceed 25 pages, excluding exhibits and attachments. This requirement can only be exceeded with prior leave of the court.

(5) Reply Memorandum. A reply must be filed within 10 days after the opposition is served, and must not exceed 10 pages, excluding exhibits and attachments.

(6) Oral Argument. Motions are decided without oral argument, unless scheduled by the court. The granting of a request for oral argument lies within the discretion of the presiding judge.

(b) Concurrence. Any party filing a nondispositive motion must certify to the court that a good faith attempt has been made to obtain concurrence in the relief sought. If obtained, a statement of concurrence must be included in the body of the motion and the word "Stipulated" must be included in the document title. This requirement does not apply to motions involving incarcerated *pro se* litigants.

(c) Summary Judgment Motions.

(1) Statement of Undisputed Facts. A separate, short and concise statement of *undisputed* material facts must accompany any motion for summary judgment, except for motions concerning claims challenging administrative actions under the Administrative Procedures Act. Failure to submit this statement constitutes grounds for denial of the motion.

(2) Statement of Disputed Facts. A separate, short and concise statement of *disputed* material facts must accompany an opposition to a motion for summary judgment or a motion under Fed.R.Civ.P. 12(b)(6) or 12(c) that is converted to a summary judgment motion.

(3) Facts Admitted. All material facts in the movant's statement of undisputed facts are deemed to be admitted unless controverted by the opposing party's statement.

(4) Statements. The statements referred to above are in addition to the material required by section (a) of this Rule and of the Federal Rules of Civil Procedure.

(5) Time for Filing. Summary judgment motions must be filed at the time specified in the schedule required by LR 26.1 (b).

(6) Notice to *Pro Se* Litigants Opposing Summary Judgment. Any represented party filing a motion for summary judgment, or a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) or 12(c) that is converted to a motion for summary judgment, against a party proceeding *pro se* shall serve and file as a separate document, together with the papers in support of the motion, a "Notice To *Pro Se* Litigant Opposing Motion for Summary Judgment" in the form indicated below. Where the *pro se* party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact.

Notice to *Pro Se* Litigant Opposing Motion for Summary Judgment

The defendant in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This means that the defendant has asked the court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION by filing your own sworn affidavits or other papers as required by Rule 56(e), Fed. R. Civ. P., and Rule 7.1(c) of the Local Rules of Procedure of this Court. An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial. The full text of Rule 56 is attached.

In short, Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements, which may include your own statements, must be in the form of affidavits. You may submit affidavits that were prepared specifically in response to defendant's motion for summary judgment.

Any issue of fact that you wish to raise in opposition to the motion for summary judgment must be supported by affidavits or by other documentary evidence contradicting the facts

asserted by the defendant. If you do not respond to the motion for summary judgment on time with affidavits or documentary evidence contradicting the facts asserted by the defendant, the court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

(d) Motions in Social Security Cases. The following procedures shall govern all actions challenging a final decision of the Commissioner of the Social Security Administration filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

(1) Time for Service and Filing of Answer. The defendant must serve and file its answer, together with a certified copy of the administrative record, within 60 days after service of the complaint on the Commissioner.

(2) Motion for Order Reversing the Commissioner's Decision. Within 60 days after the filing of the Answer, the plaintiff must file a Motion for Order Reversing the Decision of the Commissioner or for other relief and a supporting memorandum.

(3) Motion for Order Affirming the Commissioner's Decision. Within 60 days after the plaintiff's motion is filed, the defendant must serve and file a Motion for Order Affirming the Decision of the Commissioner or for other relief and a supporting memorandum responding to the specific issues raised by the plaintiff's motion.

(4) Content of the Motions and Memoranda. The motions and memoranda shall not be greater than 25 pages in length. The first section should set out the procedural history of the case. The second section should state in concise fashion each of the issues for review, as is done in an appellate brief. *A recitation of the general facts of the case is unnecessary*; rather, the pertinent facts should be discussed as part of the argument. The argument section should follow the issues section with each issue discussed in a separate subsection that sets forth the

argument with page citations to the record for supporting evidence.

(5) Reply Memoranda. Within 10 days after the defendant's motion is served, the plaintiff may file a reply to the defendant's motion. When the plaintiff raises *new* issues or arguments in a reply memorandum, defendant shall have 10 days after service of the reply memorandum to file a sur-reply.

7.2 Specified Motions

(a) Motions for Continuance of Trials. A motion to continue a trial must contain a certification that the party on behalf of whom the motion is being filed has been notified of the request by counsel.

(b) Motions for Reconsideration. A motion to reconsider an order of the court, other than a motion governed by Fed. R. Civ. P. 59 or 60, must be filed within 10 days from the date of the order.

15.1 Motions to Amend

A party moving to amend a filing must attach a redlined version of the proposed amendment to the motion, clearly designating all additions and deletions. Any amendment — whether filed as a matter of course or upon a motion to amend — must reproduce the entire filing as amended and may not incorporate any prior filing by reference, except by leave of the court.

16.1 Pretrial Conferences

(a) General. Fed. R. Civ. P. 16 pretrial conferences, including a final pretrial conference, will be scheduled by the court when deemed necessary.

(b) Final Pretrial Conference.

(1) Preparation for the Conference. All discovery must be completed prior to the final pretrial conference, unless otherwise ordered for good cause shown. In addition, before a final pretrial conference, counsel must do the following:

(A) be fully informed of their client's supporting evidence;

(B) identify the witnesses they expect to call and the nature of their testimony so as to facilitate the exchange of substantive evidence with opposing counsel;

(C) supplement or correct disclosures under Fed. R.Civ. P. 26(a) and any responses to an interrogatory, request for production or request for admission required by Fed.R.Civ.P. 26(a);

(D) should the court require, meet and jointly prepare a proposed final pretrial order covering the items in subsection (2) below;

(E) in lieu of requiring that a proposed final pretrial order be prepared prior to the conference, the court may require counsel to confer and be prepared to report orally at the conference as to the items listed in Rule 16.1(b)(2).

(2) Proposed Final Pretrial Order.

(A) The court may require the parties to jointly prepare and sign a proposed final pretrial order that contains at least the following:

(i) a statement of the nature of the case;

(ii) a statement as to whether there are amendments to the pleadings and if so, a motion to amend the pleadings;

(iii) stipulations as to proper venue, jurisdiction of the parties and subject matter, uncontested facts, the law governing the case, and anything further which may be stipulated to;

(iv) a statement of the issues of fact remaining to be determined at trial;

(v) a statement of the issues of law remaining to be determined at trial;

(vi) a statement of plaintiff's contentions including the theory of recovery;

(vii) a statement of defendant's contentions including the theory of defense;

(viii) a list of plaintiff's witnesses, including expert witnesses, and a brief description of their anticipated testimony;

(ix) a list of defendant's witnesses, including expert witnesses, and a brief description of their anticipated testimony;

(x) a list of plaintiff's exhibits expected to be offered and which may be offered if the need arises, indicating if there is agreement as to admissibility;

(xi) a list of defendant's exhibits expected to be offered and which may be offered if the need arises, indicating if there is agreement as to admissibility;

(xii) a statement of damages; and

(xiii) an estimate of the expected length of trial.

(B) The proposed final pretrial order, whether or not modified by the judge at the conference, becomes the pre-trial order when executed by the judge.

(3) At the Conference.

(A) The court may require that all written and documentary evidence and physical exhibits that counsel expect to offer on contested issues at trial — except where production has been waived — be brought to the final pretrial conference for disclosure to the court and other counsel. Large, cumbersome exhibits may be excluded by the court for good cause shown.

(B) Counsel should be prepared to discuss the availability of all witnesses and evidence for trial or what alternative arrangements have been made via transcripts, videos, etc. to present evidence. Counsel should also be prepared to discuss any evidentiary issues or other matters parties wish the court to consider before trial. Counsel are expected to raise evidentiary issues which, if raised at trial, would consume a significant amount of time and disrupt the flow of the trial. When the issue is novel or complex, the court may request that memoranda be submitted before the final trial date.

(C) Generally, parties are discouraged from attending the final pretrial conference. However, plaintiffs in personal injury cases should be available for discussion of settlement proposals. Their absence will not delay a final pretrial conference.

(D) Possible settlement of the case is explored orally at the final pretrial conference. In jury cases, counsel must be prepared to inform the court of the extent and nature of prior settlement negotiations including any reasons for non-settlement. Prior to the conference, counsel for each party must discuss acceptable terms of settlement with their clients, and each party must be represented at such

conference by counsel having authority to discuss possible settlement of the action. In the absence of full settlement authority by counsel, a person with authority should be available by phone.

(E) The court may require any or all parties to file a trial brief as to any doubtful or disputed points of law that may arise at trial.

(c) Designated Portions of Videotaped Deposition Testimony. In accordance with Fed. R. Civ. P. 26(a)(3), counsel must provide to opposing counsel the designated portions of any videotaped depositions that they intend to offer during their case at least 30 days before trial, unless otherwise ordered by the court. Within 5 business days of service, opposing counsel must notify the offering party of any objections to the designated videotaped deposition testimony and must provide any counter-designations pursuant to Fed. R. Civ. P. 32(a)(4). Counsel should bring any unresolved issues concerning such designations, objections, or counter-designations to the court's attention prior to trial.

16.2 Exhibits.

Counsel must confer prior to trial and discuss the admission of exhibits. All exhibits are to be marked prior to trial using the following procedures unless discussed otherwise at the pretrial conference:

(a) Plaintiff exhibits are marked with numbers as follows: 1 - infinity.

(b) Defendant exhibits are marked with letters as follows: A-Z; A1-A26; B1-B26; C1-C26, etc. Organizing defendant exhibits with double letters or more (AA, BBB) is burdensome and confusing.

(c) Cases involving voluminous exhibits should be brought to the court's attention at the pretrial conference and will be marked

as follows: plaintiffs will be assigned exhibit numbers 1 - 499 and defendants will be assigned exhibit numbers 500- infinity.

(d) The use of "sub" exhibits, for example 1-A or A-1 is discouraged since organization of exhibits in this manner is burdensome and confusing. If there are groups of exhibits that are related, counsel are encouraged to mark them as one exhibit.

(e) If a trial involves more than one plaintiff and/or defendant, counsel are encouraged to submit joint exhibit lists. If joint lists are not possible, counsel must confer and decide who will use which sequence of numbers or letters depending upon the volume of exhibits for each party. For example, plaintiff #1 may use the 100 series; plaintiff #2 may use the 200 series; etc. Likewise, defendant #1 may use the A1 - A26 series; defendant #2 may use the B1 - B26 series, etc.

(f) Counsel are to prepare exhibit lists that include an indication of stipulated exhibits. Stipulated exhibits are to be offered to the court for admission *prior* to the trial in order to save time. Copies of exhibit lists are to be provided to each party, the court, the courtroom clerk and the court reporter prior to trial.

(g) If possible, counsel are to prepare a notebook with copies of all exhibits for the court's use during trial. The Clerk's Office will allow very limited amounts of photocopy work during the trial free of charge (generally no more than 10 pages of photocopying). Should counsel require additional copies, they will be charged the standard Judicial Conference fee rate of $.50 per page, payment which is due upon the final day of trial.

(h) Counsel are to retain custody of all original marked exhibits throughout the trial. All exhibits admitted into evidence are to be given to the courtroom clerk for confirmation of admission either during the trial (time permitting) or during a break in trial. Confirmation of admission is done by the courtroom clerk by placing his/her initials, the date or some other identifying mark on the actual exhibit sticker. For all other purposes, exhibits remain in the custody of the introducing

party until the case is submitted to the jury or to the court. Counsel are responsible for keeping all admitted exhibits together in numerical or alphabetical order until the case is submitted to the jury or to the court.

(i) The Clerk's Office does not have the resources to store trial exhibits. At the conclusion of the proceeding, responsibility for custody of all exhibits reverts back to the parties. Should any exhibits remain in court custody, the courtroom clerk will either notify counsel that the exhibits should be removed by a date certain or will mail them to the appropriate attorney. Exhibits not removed after notification may be destroyed or disposed of without further notice.

(j) To make a record of a chalk or other non-permanent diagram, the court may permit it to be copied or photographed.

16.3 Early Neutral Evaluation (ENE)

(a) The ENE Process and Goals. Early in the processing of a case, after an opportunity for limited discovery, the litigants meet with a neutral evaluator who is knowledgeable in the subject matter of the litigation to discuss all aspects of the case. The purpose for this ENE procedure is to reduce the cost and duration of litigation by providing an early opportunity for realistic settlement negotiations or, in the absence of settlement, narrowing issues and structuring discovery and trial preparation in order to avoid unnecessary delay and expenditure of resources by the parties and the court.

(b) Cases Subject to ENE.

(1) District Court. Civil cases as designated by the following "nature of suit" statistical case code categories as shown by the JS-44 Civil Cover sheet are subject to the ENE procedures set forth by this rule, *unless excused by the court for good cause shown*:

CONTRACT: 110(Insurance), 120(Marine), 140 (Negotiable Instrument), 150(Recovery of Overpayment

& Enforcement of Judgment), 160(Stockholders' Suits), 190(Other Contract), 195(Contract Product Liability) and 196(Franchise);

REAL PROPERTY: 230(Rent Lease & Ejectment), 240(Torts to Land), 245(Tort Product Liability) and 290(All Other Real Property);

TORTS: 310-368(all Personal Injury cases) and 370-385(all Personal Property cases);

CIVIL RIGHTS: 442(Employment), 440(Other Civil Rights), 445(Americans w/Disabilities-Employment) and 446(Americans w/Disabilities-Other);

LABOR: 720(Labor/Mgmt Relations), 740(Railway Labor Act), 790(Other Labor Litigation) and 791(Empl. Ret. Inc. Security Act);

PROPERTY RIGHTS: 820(Copyrights), 830(Patent) and 840(Trademark); and

OTHER STATUTES: 410(Antitrust), 430(Banks and Banking), 470(Racketeer Influenced and Corrupt Organizations), 480(Consumer Credit), 490 (Cable/Satellite TV), 850(Securities/Commodities/ Exchange), 891(Agricultural Acts), 893(Environmental Matters) and 900(Appeal of Fee Determination Under Equal Access to Justice).

(2) Subject to Change. Categories of cases subject to this rule may be changed pursuant to court order.

(3) Bankruptcy Court. Bankruptcy cases or matters, as designated by the bankruptcy judge, are eligible for the ENE process.

(c) ENE Administration. A member of the district court staff serves as ENE Administrator to oversee the ENE program and perform the duties specified under this rule.

(d) Neutral Evaluators.

(1) Roster. The court maintains a roster of neutral evaluators who are appointed by the court. To be eligible for the roster a person should be:

(A) an attorney admitted to practice for not less than 5 years, with significant trial experience and substantive expertise that will serve the objectives of the ENE program; or

(B) a non-attorney, or an attorney admitted to practice for less than 5 years, who has expertise in a substantive or legal area that will serve the objectives of the ENE program.

(2) Compensation. Evaluators are paid $500 per case evaluated, the cost to be shared equally by the parties. This fee assumes an ENE session of approximately one half day, related preparation and submission of an evaluator's report. If significantly more time is required for the ENE session, or if an additional session is required, or the parties request the evaluator to prepare a formal evaluation, the parties and the evaluator must agree upon any additional compensation.

(3) ENE by Stipulation. The parties may stipulate to Early Neutral Evaluation performed by a person of their choosing, for an agreed upon fee. ENE by stipulation is permitted if, no later than the date on which the parties are required to report their evaluator selection to the ENE Administrator, they file with the ENE Administrator a stipulation, signed by all parties, containing the following information:

(A) the name and mailing address of the evaluator;

(B) the fee arrangement with the evaluator, clearly setting forth each party's share of the fees;

(C) the agreement of each party to participate in the evaluation procedure; and

(D) the agreement of the evaluator to perform Early Neutral Evaluation in accordance with the rules of the court.

(4) No Report. If the ENE Administrator does not receive an ENE report from the stipulated evaluator within the time period allotted, the ENE Administrator must schedule ENE in accordance with section (e) below.

(e) Selection of Neutral Evaluator.

(1) Choice and Assignment. After the answer is filed (the last answer in a multiple defendant case), the ENE Administrator sends to the parties a list of potential evaluators from the court's roster. The number of evaluators on the list must be one more than the number of "sides" in the litigation. For purposes of this rule, all plaintiffs are one side, all defendants are one side, and all third-party defendants are one side. The parties have 10 days — calculated pursuant to Fed. R. Civ. P. 6 — from the date the list is sent to report their selection, in writing, to the ENE Administrator. If the parties fail to agree, each "side" may, but need not, strike the name of one potential evaluator, notifying the ENE Administrator, in writing, of the strike within that same 10 days. The ENE Administrator assigns the selected evaluator or, in the absence of agreement, an evaluator whose name was not stricken, and promptly notifies the parties and the evaluator of the designation. The evaluator selection process should be completed quickly to enable the parties to consult with the evaluator in scheduling the ENE session for inclusion in the discovery schedule required by LR 26.1(b).

(2) Conflicts. No person may serve as a neutral evaluator for a case in which any of the circumstances specified in 28 U.S.C. § 455 exists, unless there is a waiver by all parties. An evaluator must promptly disclose

disqualifying circumstances to the ENE Administrator. A party who believes that a potential or assigned evaluator has a conflict of interest must notify the ENE Administrator within 5 days of learning of the possible conflict or is deemed to have waived objection.

(f) Scheduling and Reporting the Session Date.

(1) Midpoint of Discovery. The ENE session should ordinarily be scheduled at or near the midpoint of the eight-month discovery period and the date for the ENE sessions *must* be included in the discovery schedule required under LR 26.1(b). Parties must consult with their chosen evaluator when selecting a date for the session to ensure evaluator availability. Discovery should be planned to ensure that parties are prepared for serious and productive settlement negotiations and to otherwise facilitate the goals of ENE.

(2) Rescheduling - No Motion Required. The evaluator has the discretion to reschedule the ENE session if the new date is less than 60 days after the date set in the LR 26.1(b) discovery schedule and no request for extension of the trial readiness date is anticipated by the parties.

(3) Rescheduling - Motion Required. If the request is for an indefinite postponement or a new date is known but requires extension of the trial-readiness date, a motion requesting an extension of the ENE session shall be filed with the court. The ENE extension date will be granted only upon good cause shown.

(4) Rescheduling - Other Situations. In situations not covered by either (2) or (3) above, parties should contact the ENE Administrator in the Clerk's Office. The ENE Administrator has the discretion to either approve rescheduling of the ENE session or request that the parties file a motion to reschedule with the court.

(g) Attendance at ENE Sessions.

(1) Individuals. The parties themselves must attend the ENE session unless excused pursuant to subsection (g)(3) below. This requirement reflects the court's view that the main objectives of ENE are to afford litigants an opportunity to articulate their positions, to hear first hand their opponent's views on the matters in dispute, to hear a neutral assessment of the strengths and weaknesses of each party's case and to foster an environment for serious and productive settlement efforts.

(2) Corporations. When a party is not a natural person (for example, a corporation), a person (other than outside counsel) possessing settlement authority and the authority to enter into stipulations for the entity must attend. When the party is the United States Government, or an agency or unit thereof, this requirement is satisfied by the attendance of counsel from the United States Attorney's office who has settlement authority and the authority to enter into stipulations.

(3) Insurance Companies. In cases involving insurance carriers, representatives of the insurance companies with settlement authority *must* attend the ENE session. Should an insurance carrier or insurance representative have exclusive settlement authority, the insured party need not attend.

(4) Counsel. An attorney for each party who has primary responsibility for handling the trial of the case must attend the ENE session.

(5) Settlement Authority Defined. As used in this rule, "settlement authority" means the individual with control of the *full financial settlement resources* involved in the case, including insurance proceeds.

(6) Excusal. A party or attorney can be excused from attending the ENE session only with court approval upon

a showing of unreasonable hardship. An excused person must be available by telephone during the session and must designate a person who is familiar with the case to attend in his or her place. A request to be excused must be submitted to the court, in writing, at least 15 calendar days before the session date and must identify the substitute who will attend the session and describe his or her familiarity with the case. The designation of a substitute is subject to court approval.

(h) Evaluation Statements.

(1) Requirements. At least 10 calendar days before the ENE session, each party must submit directly to the evaluator and serve upon all parties, a written evaluation statement not to exceed 10 pages in length (excluding exhibits and attachments). The statements must:

(A) give a brief statement of facts;

(B) identify the legal and factual issues in dispute and the submitting party's position relating to those issues;

(C) address whether there are legal or factual issues the early resolution of which might facilitate early settlement or reduce the scope of the dispute;

(D) identify the attorney who will represent the party at the ENE session; and

(E) identify the person(s), in addition to counsel, who will attend the ENE session as the party's representative with decision making authority.

Other matters that will assist the evaluator may be included. Parties must attach to their statements copies of key documents out of which the case arose (e.g. a contract) or other materials that will assist the evaluator and advance the purposes of the ENE session (e.g. medical reports, photographs).

(2) Statements Not Filed. Evaluation statements are solely to facilitate the ENE process and must not be filed with the court or provided to the presiding judge.

(i) Procedures at the ENE Session.

(1) Structure. The evaluator has broad discretion in structuring the ENE session. The session is informal and the rules of evidence do not apply. There is no formal examination or cross-examination of witnesses.

(2) Preparation. The parties must be prepared to participate fully in the procedures outlined by subsections (i)(1) through (3) herein, and to discuss realistic estimates of case value and cost and delay that will result if settlement efforts are not successful. The costs to be addressed include, but are not limited to, those for additional discovery, expert witnesses, attorney fees and other costs associated with preparation for trial and actual trial.

(3) Conducting the Session. The evaluator must:

(A) permit each party to make an oral presentation of its position;

(B) help the parties to identify areas of agreement and enter a stipulation, where feasible;

(C) assess the strengths and weaknesses of the parties' contentions and evidence and explain the reasons for the assessments;

(D) explore the possibility of settlement using private caucusing and mediation techniques; and

(E) estimate, where feasible, the likelihood of liability and the range of damages.

(4) No Settlement. If the session does not result in settlement, the evaluator must:

(A) discuss with the parties follow-up measures that will contribute to efficient case development or future settlement (e.g. an additional ENE session, formal evaluation, other ADR procedures, etc.); and

(B) help the parties develop an information sharing plan or discovery plan to expedite settlement discussions or position the case for efficient and timely disposition by other means.

(5) Remedy for Noncompliance. Any party who believes that another party or parties has not complied in good faith with this rule may file a motion to that effect with the court.

(j) Evaluator's Report.

(1) Items to Include. Within 15 calendar days after the ENE session, the evaluator must file with the court and send to the parties, a report that includes:

(A) the date on which the session was held, including the starting and finishing times;

(B) a list of the names of the persons attending, showing their role in the session and specifically identifying the representative of each party who had decision making authority;

(C) a summary of any substitute arrangement made regarding attendance at the session;

(D) the date of receipt of each parties written evaluation statement;

(E) notations showing whether each party did or did not make an oral presentation of its position; and

(F) the results of the session, i.e., stating whether full or partial settlement was reached and, where appropriate, describing:

(i) any stipulation to narrow the scope of the dispute;

(ii) any agreement to limit discovery, facilitate future settlement or otherwise reduce cost and delay related to trial preparation — including scheduling another ENE session.

(2) Items to Exclude. The report must not disclose:

(A) the evaluator's assessment of any aspect of the case; or

(B) substantive matters discussed during the session, except as is required to report information described in subsection (j)(1)(F) above.

(k) Confidentiality.

(1) ENE Process. All written and oral communications made in connection with or during the ENE process are confidential. The ENE process is treated as a settlement negotiation under Fed. R. Evid. 408.

(2) Exceptions. This section does not apply to any stipulation or agreement to narrow the scope of the dispute, facilitate future settlement or otherwise reduce cost and delay that was approved by all parties.

(3) Evaluation of ENE Process. Parties, counsel, insurance representatives and evaluators may respond to inquiries from persons authorized by the court to monitor or evaluate the ENE program. The sources of data and opinions collected for this purpose will be kept confidential.

IV. PARTIES

23.1 Class Actions

In any case sought to be maintained as a class action these requirements must be met:

(a) Title. The complaint must bear next to its caption the legend, "Complaint - Class Action."

(b) Separate Allegations. The complaint must contain the following under a separate heading, styled "Class Action Allegations":

(1) Rule Citation. A reference to the portion or portions of Fed. R. Civ. P. 23, under which it is claimed that the suit is properly maintainable as a class action.

(2) Class Justification. Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis upon which the plaintiff(s) claims to be an adequate representative of the class, or if the class is comprised of defendants, that those named are adequate representatives of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions to be maintainable as class actions under subdivision (b)(3) of Fed. R. Civ. P. 23, allegations thought to support the findings required by that subdivision.

(c) Motion and Ruling Under Fed. R. Civ. P. 23(c)(1). Within 90 days after filing a class action complaint, unless the period is extended on motion for good cause, the plaintiff must move for a determination under Fed. R. Civ. P. 23(c)(1), as to whether the case is to be maintained as a class action. The defendant's response to the motion is due within 10 days or on the due date of the answer, whichever is later. In ruling, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. If the determination is postponed, a date for renewal of the motion should be fixed by the court.

(d) Other Claims. The foregoing provisions apply, with appropriate adaptations, to any counterclaims or cross-claims brought for or against a class.

V. DEPOSITIONS AND DISCOVERY

26.1 Discovery

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. The provisions of Fed. R. Civ. P. 26(a)(1) apply in this district unless the court orders otherwise.

(2) Disclosure of Expert Testimony. The provisions of Fed. R. Civ. P. 26(a)(2) apply in this district unless the court orders otherwise.

(3) Pretrial Disclosures. The provisions of Fed. R. Civ. P. 26(a)(3) apply in this district unless the court orders otherwise.

(b) Discovery Schedule.

(1) When Due. Within 30 days after filing the answer — the last answer in multiple defendant cases — counsel for the parties must confer as required by Fed. R. Civ. P. 26(f), and as a result of that conference must *jointly* prepare and file a *single* schedule providing for the completion of discovery no later than 8 months after the last answer was filed.

(2) Form. Counsel must conform any proposed stipulated discovery schedule to the sample form following LR 33.1. Copies of this form are available at the Clerk's Office. Locally produced discovery schedules are permitted provided that they conform to the sample in both form and content. Schedules that do not comply will be returned to plaintiff's counsel for resubmission.

(3) What to Include. The proposed schedule must include at least the following deadlines, as seen in the form below:

(A) initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1);

(B) service of all interrogatories, and requests for production;

(C) completion of non-expert witness depositions;

(D) disclosure and deposition of plaintiff's expert witnesses;

(E) disclosure and deposition of defendant's expert witnesses;

(F) service of all requests for admission;

(G) in cases subject to Early Neutral Evaluation under LR 16.3(b), the date and time of the ENE session and the evaluator assigned;

(H) discovery deadline;

(I) motion filing deadline, including summary judgment motions but excluding motions relating to the conduct of the trial;

(J) other such deadlines as counsel may find necessary in a particular case; and

(K) a ready-for-trial date.

(4) Noncompliance. Counsel must comply strictly with the terms of this section. Failure to do so constitutes a waiver of the need for discovery and the case will be scheduled for trial when reached.

(5) Final Order. Once approved by the court, the discovery schedule becomes the scheduling order provided by Fed. R. Civ. P. 16(b).

(6) Extensions. If additional discovery time is required — due to case complexity or other extraordinary circumstances — counsel may move for an extension of time for good cause shown. Absent exceptional circumstances, requests must be made before the discovery deadline expires.

(c) Third-Party Discovery Schedule. Third-party proceedings are subject to subsection (b)(1) above except that their discovery schedule must be filed no more than 30 days after the third-party answer is filed. The schedule must provide for completion of discovery no later than the later of these two dates: the date provided by any schedule filed pursuant to subsection (b)(1) above, or 3 months after the third-party answer is filed.

(d) Motions Related to Discovery Procedure.

(1) Good Faith Effort. Counsel are obligated to make good faith efforts among themselves to reduce all differences relating to discovery procedures and to avoid filing unnecessary discovery motions.

(2) Filing Discovery Motions.

(A) Before Filing. Motions made pursuant to Fed. R. Civ. P. 26 and 37 must not be filed unless the movant has conferred with opposing counsel in a good faith effort to reduce or eliminate the area of controversy or arrive at a mutually satisfactory resolution.

(B) Motion with Affidavit. If discovery issues are not resolved and a motion is necessary, an affidavit containing the following must be filed with the motion:

(i) certification that counsel have conferred in good faith to resolve the dispute without court intervention;

(ii) any issues still unresolved and the reasons therefor; and

(iii) the date or dates of consultation with opposing counsel, the names of the participants, and the length of time of the conferences.

(C) Costs Assessed. Counsel seeking discovery is obligated to initiate conferences promptly. If a refusal to confer in good faith results in the filing of a discovery motion, counsel may be subject to the imposition of costs, including the attorney's fees of opposing counsel, under Fed. R. Civ. P. 26(c), 30(d), 30(g)(1)(2), and 37(a)(4).

(D) Supporting Memoranda. Memoranda as noted in LR 7.1(a) must be filed with discovery motions. The memoranda must contain:

(i) a concise statement of the nature of the case; and

(ii) except where the motion is based upon the failures described in Fed. R. Civ. P. 37(d), a specific verbatim listing of each discovery item sought or opposed, followed immediately by the reason the item should be allowed or disallowed.

(e) Answers and Objections to Interrogatories. The interrogatory being answered must be repeated immediately before the answer. The interrogatory being objected to must be repeated immediately before the written objection.

(f) Discovery Papers in Civil Actions. Pursuant to Fed. R. Civ. P. 5(d), all depositions, interrogatories, requests for documents, requests for admissions, answers to this discovery, notices of deposition, requests to permit entry upon land, expert disclosures and expert reports must *not* be filed unless required to support interlocutory motions or for use at trial. For these discovery documents, only a properly captioned certificate of service is required to be filed, unless the court orders otherwise.

(g) Disclosure of Expert Testimony. If the parties seek an exemption from the disclosures required by Fed. R. Civ. P. 26(a)(2) by stipulation, they must state with particularity the reasons why such disclosures are impracticable in the context of the case and their discovery schedule. An exemption is subject to court approval and shall not ordinarily be granted.

33.1 Interrogatories

When discovery requests are served before entry of the discovery schedule/order, the responses to such requests are due within 30 days of service, or 15 days after entry of the discovery schedule/order, whichever is later.

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

_____ Plaintiff(s),	)	
	)	
v.	)	Case No.
	)	
_____ Defendant(s).	)	

STIPULATED DISCOVERY SCHEDULE/ORDER

The parties submit the following Discovery Schedule pursuant to Local Rule 26.1(b):

1. The parties shall serve initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on or before _____.

2. The parties shall serve all interrogatories and requests for production on or before _____.

3. Depositions of all non-expert witnesses shall be completed by _____.

4. Plaintiff shall submit expert witness reports on or before ___ _____. Depositions of plaintiff's expert witnesses shall be completed by_____.

5. Defendant shall submit expert witness reports on or before __ _____. Depositions of defendant's expert witnesses shall be completed by _____.

6. The Early Neutral Evaluation session shall be conducted on _____ at _____.m. The parties have agreed that _____ will serve as the early neutral evaluator. **(Note: Paragraph 6 only applies to ENE-eligible cases pursuant to Local Rule No. 16.3.)**

7. The parties shall serve all requests for admission on or before _____.

8. All discovery shall be completed by _____ (no later than 8 months after filing of answer).

9. Motions, including summary judgment motions but excluding motions relating to the conduct of the trial, shall be filed on or before _____ _____.

10. This case shall be ready for trial by _____.

_____ _____
Date *Counsel for Plaintiff(s)*

_____ _____
Date *Counsel for Defendant(s)*

APPROVED and SO ORDERED: _____
U.S. District/Magistrate Judge

Date: _____

Local Form/Rule 26.1(b)

VI. TRIALS

38.1 Trial by Jury

In all civil jury cases, the jury will consist of at least 6 and no more than 12 jurors. All jurors must participate in the verdict unless excused from service by the presiding judge pursuant to Fed. R. Civ. P. 47(c).

42.1 Consolidated Cases

(a) Notice. Counsel have an on-going duty to inform this court of cases pending in another court or other judicial forum, which are related to cases before this court. A related case may be noted on the civil cover sheet, or by separate notice if it becomes known later in the case.

(b) Order of Consolidation. If two or more cases are related, the court may — on its own motion or upon motion of a party — enter an order of consolidation. The order shall list all related cases in the caption, beginning with the oldest, and shall be entered to each affected case. Unless otherwise indicated by the judge, the oldest case becomes the lead case.

(c) Subsequent Filings.

(1) Docketing. After entry of the order of consolidation, all subsequent filings in any of the consolidated cases are docketed only in the lead case.

(2) Format. The caption for all filings must list all cases in the consolidation, beginning with the oldest.

45.1 Witnesses in *In Forma Pauperis* Cases

(a) In General. If a party proceeding *in forma pauperis* desires the attendance of any witness by subpoena or writ, that party must file — at least 20 days before the trial or hearing — a witness list containing the name, address, and, if applicable, the inmate number, and a brief statement of the expected testimony of each witness. It is within the court's discretion to decline to order procurement of the witness if the stated testimony is not material or is repetitive.

(b) Subpoena Costs. Cases filed *in forma pauperis* pursuant to 28 U.S.C. §§ 2254 and 2255 and in indigent criminal cases, all witness, service and subpoena fees shall be paid by the United States Marshal pursuant to court order approving same.

45.2 Witnesses in *Pro Se* Cases

The provisions of LR 45.1 regarding court approval of witness lists apply also to *pro se* parties.

47.1 Jury Costs in Civil Actions

If a case is settled or otherwise disposed of after a jury has reported for duty, jury costs may be assessed against one or more parties. Assessment may be ordered if, after hearing, the court believes that settlement or disposition would have been reasonably possible earlier.

51.1 Requests for Jury Instructions and Requests to Charge

(a) Jury Cases. Requests for jury instructions must be filed no later than 7 days prior to the trial date. Failure to file requests for instructions is — except in exceptional circumstances — deemed a waiver of a party's right to file such requests.

(b) Non-Jury Cases. In non-jury cases the parties must submit proposed findings of fact and conclusions of law no later than 7 days from the scheduled trial date, unless modified by the court.

VII. JUDGMENT

54.1 Costs

Requests for taxation of costs may be made on motion filed no later than 10 days after the time for filing a notice of appeal has passed. The motion should include a supporting memorandum, a proposed Bill of Costs and when available, copies of relevant billing information, invoicing statements or expense receipts indicating costs incurred. Costs involving the ENE process are generally non-taxable. See 28 U.S.C. § 1920**.** In the event of an appeal, requests for taxation of costs erroneously filed prior to the resolution of the appeal will be deferred until the appellate court issues its mandate. Costs as allowed on appeal are taxable by the district court for the benefit of the party entitled to them. R. 39(e), FED R. APP. P.

55.1 Default Judgment

(a) By the Clerk.

(1) Documents to Submit. When a party is entitled to have a default judgment entered by the clerk pursuant to Fed. R. Civ. P. 55(b)(1), that party must submit the following:

(A) an application for clerk's entry of default;

(B) the actual clerk's entry of default, which will be produced by the Clerk's Office when the required information is verified;

(C) an application for entry of default judgment; and

(D) a proposed default judgment with a statement showing the following:

(i) the principal amounts due which cannot exceed the amount of the original demand, giving credit for any payments and showing the amounts and dates thereof;

(ii) a computation of accrued interest to the proposed day of judgment; and

(iii) any costs and taxable disbursements claimed.

(2) Affidavit. An affidavit of counsel or the party seeking default judgment must be attached to the statement showing:

(A) that the party against whom judgment is sought is not an infant, an incompetent person, or in the military service;

(B) that the party has made a default in appearance in the action;

(C) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as stated; and

(D) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein. The clerk must then enter judgment for principal, interest and costs.

(b) By the Court. When applying for entry of default judgment pursuant to Fed. R. Civ. P. 55(b)(2), the following papers must be filed:

(1) an application for clerk's entry of default;

(2) the actual clerk's entry of default, which will be produced by the Clerk's Office when the required information is verified;

(3) a motion for entry of default judgment; and

(4) a proposed default judgment order.

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✎AO 133 (Rev. 9/89) Bill of Costs

UNITED STATES DISTRICT COURT

_____ District of _____

BILL OF COSTS

V.

Case Number:

Judgment having been entered in the above-entitled action _____ against _____,
Date

the Clerk is requested to tax the following as costs:

Fees of the Clerk	$
Fees for service of summons and subpoena	
Fees of the court reporter for all or any part of the transcript necessarily obtained	
Fees and disbursements for printing	
Fees for witnesses (itemize on reverse side)	
Fees for exemplification and copies of papers necessarily obtained for use in the case	
Docket fees under 28 U.S.C. 1923	
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	
Other costs (please itemize)	
TOTAL	$

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: _____.

Signature of Attorney: _____

Name of Attorney: _____

For _____ Date: _____
Name of Claiming Party

Costs are taxed in the amount _____ and included in the judgment.

_____ By _____ _____
Clerk of Court Deputy Clerk Date

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)

NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
					TOTAL		

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
"Sec. 1924. Verification of bill of costs."
"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:
"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:
Rule 54(d)
"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6(e)
"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)
"Entry of the judgment shall not be delayed for the taxing of costs."

VIII. PROVISIONAL AND FINAL REMEDIES

67.1 Deposit of Registry Funds Into Interest-Bearing Accounts or Instruments

(a) Receipt of Funds.

(1) Order Required. An order by the presiding judge in a case or proceeding is required before any money can be accepted by the court or its officers for deposit into the court's Registry.

(2) Deposited with U.S. Treasurer. Unless provided elsewhere pursuant to court order, all money received by the court or its officers for any case filed with the U.S. District Court for the District of Vermont must be deposited with the Treasurer of the United States, or a designated depository in the name and to the credit of this court, pursuant to 28 U.S.C. § 2041.

(3) Service on Clerk Required. The party making the deposit or tendering funds for the court's Registry *must* serve the order permitting the deposit or transfer on the clerk of court, or in the clerk's absence, upon the chief deputy.

(b) Investment of Registry Funds.

(1) Stipulation Required. Pursuant to Fed. R. Civ. P. 67 and on motion by an interested party, whenever the court determines that Registry funds will be placed into an interest-bearing account or instrument, counsel appearing in the action *must* enter into a *written* stipulation describing the specifics of the investment mechanism.

(2) Court Recommendation. It is the recommendation of this court that the primary source for investment of registry funds be the Court Registry Investment System (C.R.I.S.) administered by the United States District Court for the Southern District of Texas.

(3) Court Registry Investment System (C.R.I.S.). Under this system, monies are pooled with other Registry

monies on deposit with other federal courts nationwide. The funds are used to purchase Treasury securities held at the Federal Reserve Bank, Dallas/Houston Branch, in a safekeeping account in the name and to the credit of the clerk of court for the United States District Court for the Southern District of Texas, the designated custodian.

(4) Separate Account. A separate account will be established in the C.R.I.S. system titled in the name of the case giving rise to the investment. All income received from each investment will be distributed on a pro-rata basis based upon the ratio of each account's principal to the total aggregate income received. Weekly reports indicating the amount of principal contributed and the income earned will be prepared and distributed to each court participating in the C.R.I.S. For parties appearing in an action which utilizes the C.R.I.S. system, copies of the earnings reports are available upon written request to the clerk of court.

(5) Other Investments. Should an investment mechanism other than C.R.I.S. be utilized, the written stipulation filed by counsel *must* contain the following information:

(A) the form of interest-bearing account or instrument;

(B) the name and address of the private institution where the deposit is to be made or by whom the interest-bearing instrument is to be issued;

(C) the name, address, social security number or taxpayer identification number of the party or parties with a real or potential interest in the deposit or instrument;

(D) the form of additional collateral to be posted by the private institution in the event that standard FDIC coverage is insufficient to insure the total deposit; and

(E) any other appropriate information applicable to the facts and circumstances of the particular case.

(6) Custodian. Upon court order to deposit and invest Registry funds *locally*, the clerk of court serves as

custodian of the account or financial instrument and must keep such account, certificate of deposit or financial instrument safe and secure. All Registry funds locally collateralized are subject to further order of the court.

(c) Registry Investment Fee.

(1) Fee Amount. Pursuant to 28 U.S.C. § 1913, the custodian of Registry funds entrusted to the district court is authorized to deduct a fee, based on the duration of the deposit and the income earned. The fee is assessed at a variable rate of up to 10 percent of interest income but cannot exceed 3 percent of the principal. The fee must be deposited by the clerk of court, or the authorized custodian of an investment account, with the U.S. Treasury to the credit of the Administrative Office of the United States Courts.

(2) Disbursement. Upon conclusion of the case or proceeding involving investment of registry funds, all registry principal and income, less the Registry fee assessment, will be disbursed to its rightful owner(s) by the authorized custodian pursuant to court order.

(d) Notice to Clerk of Court.

(1) Service on Clerk Required. After an order to invest or reinvest Registry funds *locally* is entered, the movant must serve a copy of the order on the clerk of court, or in the clerk's absence, on the chief deputy clerk. The movant also must confirm that appropriate action has been taken by the clerk of court in accordance with the provisions of the Registry order to invest funds. Absent service of the order, the clerk of court is relieved from personal liability concerning the management of the Registry fund investment.

(2) Temporary Account. If directed pursuant to court order, funds may be *temporarily* received by the clerk of court and retained in a *non-interest* bearing account pending stipulated agreement between the parties involved.

IX. SPECIAL PROCEEDINGS

72.1 Duties of Magistrate Judge

(a) General Authorization. The full-time United States magistrate judge is authorized to exercise all the powers and perform all duties conferred upon magistrate judges by 28 U.S.C. § 636, and to exercise the powers stated in the Rules Governing §§ 2254 and 2255 Proceedings.

(b) Other Duties. A magistrate judge is also authorized to:

(1) exercise general supervision of civil and criminal calendars, and determine motions to expedite or postpone the trial of cases for the judges;

(2) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(3) conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(4) impanel grand juries and receive grand jury returns pursuant to Fed. R. Crim. P. 6(f);

(5) accept waivers of indictment pursuant to Fed. R. Crim. P. 7(b);

(6) conduct *voir dire* and select petit juries for the court;

(7) accept petit jury verdicts in civil cases in the absence of a judge;

(8) conduct necessary proceedings leading to the potential revocation, termination or modification of supervised release;

(9) issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(10) order the exoneration or forfeiture of bonds;

(11) order the withdrawal of funds from the court's Registry;

(12) conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69; and

(13) perform any additional duty not inconsistent with the Constitution and laws of the United States.

(c) Automatic Referrals to Magistrate Judge. Referral of any case or matter to the magistrate judge is by court order, except that the following cases are automatically referred when filed:

(1) complaints under § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVIII of the Act; and

(2) actions arising under 28 U.S.C. §§ 2254 and 2255 or challenging the conditions of confinement of prisoners.

72.2 Referral of Cases to Magistrate Judge

During the absence or unavailability of either the chief judge or the district judge, all civil and criminal cases are referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1).

72.3 Objections to Report and Recommendations of Magistrate Judge

Any objection to a report and recommendation of the magistrate judge must be served on all parties and upon the magistrate judge.

73.1 Direct Assignment of Civil Cases to the Magistrate Judge

(a) Direct Assignments. The Clerk's Office is directed to assign a percentage of civil cases directly to the magistrate judge, excluding bankruptcy appeals, complaints filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVIII of the Act, cases filed pursuant to 28 U.S.C. §§ 2254 and 2255 or challenging the conditions of confinement of prisoners, and cases seeking an immediate temporary restraining order. The exact percentage

of direct assignments shall be determined periodically by the judges of the court.

(b) Notification. Notification of direct assignment will be by service of the "Notice of Assignment" form with the complaint. The Clerk's Office will return to the plaintiff a copy of the "Notice of Assignment" form for each party in the case, which the plaintiff shall serve with the complaint. Each party shall execute the form, indicating their consent or objection, and return it to the Clerk's Office.

(c) Consent Voluntary. Consent to assignment of a case to the magistrate judge is strictly voluntary and no adverse consequences of any kind will come to any attorney or party who objects to an assignment. However, return of the executed form to the Clerk's Office is *mandatory*, whether the action taken is to consent or object to the assignment.

(d) Objections. If any party objects to the assignment, the case will be reassigned to a district judge and another new case will be directly assigned to the magistrate judge as a replacement.

(e) Magistrate Judge Authority. The magistrate judge will exercise all authority pursuant to 28 U.S.C. § 636(b) from the date the case is filed until all executed forms have been returned. Once it is confirmed that all forms have been returned and there are no objections to the assignment, the magistrate judge will exercise all authority pursuant to 28 U.S.C. § 636(c). If there are any objections, the magistrate judge will become the referred judge in the matter and will continue to exercise authority pursuant to 28 U.S.C. § 636(b) and in accordance with Fed. R. Civ. P. 72(a) and (b).

X. DISTRICT COURTS AND CLERKS

77.1 Orders by Clerk of Court

The Clerk may issue orders when authorized by the Federal Rules of Civil Procedure. The Clerk also may issue the following without further direction of the court:

(1) orders granting stipulated, nondispositive motions that do not alter any previously established deadline; and

(2) scheduling orders in criminal cases, in the absence or unavailability of the judges of this court.

XI. GENERAL PROVISIONS

83.1 Applicability of Rules of Civil Procedure

These Local Rules are in addition to and supplement the Federal Rules of Civil Procedure. Both sets of Rules apply to civil actions in this district unless they conflict with each other or with any statute of the United States, in which event the Federal Rules of Civil Procedure or the statute prevails. No conflict is deemed to exist unless specifically called to the attention of the court by a party's written memorandum specifically pointing out the area of conflict with a suggested equitable resolution of any problems raised.

83.2 Admission and Discipline of Attorneys

(a) Admission of Attorneys.

(1) Qualifications. Any attorney of the Bar of the State of Vermont, or any attorney of the Bar of any federal district court in the First and Second circuits, whose professional character is good, and who follows the procedures listed below at item (2), may be admitted to practice in this court.

(2) Procedures. An applicant meeting the qualifications above must do the following to be admitted to this court:

(A) contact the Clerk's Office to determine the next admission date;

(B) request an "Application for Admission" and a copy of the local rules (also available from the court's website);

(C) secure a member in good standing of the Bar of this court to serve as sponsor;

(D) appear at the Clerk's Office before the scheduled time on the admission date; bring a completed application including an application fee in the amount of $150 made payable to "Clerk, U.S. District Court"; and

(E) appear with the sponsor in open court to take the required oath.

(3) Certificate. A formal certificate of admission and accompanying letter containing the admitted attorney's Federal bar number is mailed to counsel shortly after admission.

(b) Admission of Attorneys *Pro Hac Vice*.

(1) Application for Admission. Any attorney who is a member in good standing of the Bar of any federal court, or of the highest court of any state, may apply for *pro hac vice* admission by fulfilling the following requirements:

(A) Motion. A member in good standing of the Bar of this court who is actively associated with the attorney seeking *pro hac vice* admission must file a motion making the request.

(B) Supporting Affidavit. The attorney seeking admission must attach to the motion an affidavit containing the following information:

(i) the attorney's office address and telephone number;

(ii) a listing of court(s) to which the attorney has been admitted to practice and the date(s) of admission;

(iii) a statement that the attorney is in good standing and eligible to practice in the court(s);

(iv) a statement that the attorney is not currently suspended or disbarred in any jurisdiction; and

(v) a statement on the nature and status of any pending disciplinary matters involving the attorney.

(C) Fee. A $150 fee payable to "Clerk, U.S. District Court" must accompany the motion for *pro hac*

vice admission. This fee is non-refundable should the motion be denied.

(2) Revocation. The court may at any time revoke a *pro hac vice* admission for good cause without a hearing.

(3) Local Counsel. An attorney admitted *pro hac vice* must remain at all times associated in the action with a member of the Bar of this court upon whom all process, notices, and other papers must also be served. Counsel associated with the attorney appearing *pro hac vice* is also required to sign all filings and attend all court proceedings, unless excused by the court. This provision may be waived by the court upon good cause shown.

(4) Noncompliance. An attorney seeking *pro hac vice* admission may file original proceedings but the time for filing a responsive pleading does not commence until the notice of appearance of associated local counsel is received and filed.

(c) Admission of Attorneys for the United States. An attorney employed by an agency of the United States government who does not qualify for admission pursuant to LR 83.2(a)(1) supra but who is admitted to practice before any District Court of the United States, whose professional character is good and who is not subject to any pending disciplinary proceedings may be admitted to practice in this court, without payment of the application fee, upon motion of the United States Attorney for the District of Vermont and upon taking the proper oath.

(d) Rules of Disciplinary Enforcement.

(1) Attorneys Convicted of Crimes.

(A) Immediate Suspension. When a certified copy of a judgment of conviction is filed, the court will enter an order immediately suspending — until final disposition of a disciplinary proceeding — any bar member of this court convicted of a serious crime in any federal court, District of Columbia, or any state, territory, commonwealth, or United States possession, regardless of the pendency of any appeal. A copy of the order must be served immediately upon the attorney. Upon good cause

shown, the court may set aside the order when it is in the interest of justice to do so.

(B) Serious Crime. The term "serious crime" includes a felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the relevant jurisdiction, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(C) Conclusive Evidence. A certified copy of a judgment of conviction of an attorney for any crime is conclusive evidence of the commission of that crime in any disciplinary proceeding.

(D) Referral to Counsel. If a certified copy of a judgment of conviction is filed, in addition to suspending the attorney, the court will refer the matter to counsel to begin a disciplinary proceeding. The sole issue in the proceeding will be the final discipline to be imposed as a result of the illegal conduct. A disciplinary proceeding must not be brought to final hearing until all appeals from the conviction have been concluded.

(E) Referral Discretionary. Upon filing a certified copy of a judgment of conviction for a "non-serious crime," the court may refer the matter to counsel for necessary action, including the institution of a disciplinary proceeding before the court. The court may, in its discretion, make no reference with respect to convictions for minor offenses.

(F) Reinstatement. An attorney suspended under this rule will be reinstated immediately upon filing a certificate showing that the conviction has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, whose disposition will be determined by the court on the basis of all available evidence

pertaining to both guilt and the discipline to be imposed.

(2) Discipline Imposed by Other Courts.

(A) Duty to Notify. Any bar member of this court must promptly notify the clerk of court upon being disciplined by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States.

(B) Notice to Attorney. On filing a certified copy of a judgment or order showing that a bar member of this court has been disciplined by another court, this court will promptly issue a notice to the attorney containing:

(i) a copy of the judgment or order from the other court; and

(ii) an order to show cause directing that the attorney inform this court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (D) below, that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

(C) Discipline Deferred. If the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court will be deferred until the stay expires.

(D) Identical Discipline. Thirty days after service of the order to show cause issued per subsection (B), this court will impose the identical discipline unless the respondent-attorney has demonstrated, or this court finds, that upon consideration of the underlying record from the other jurisdiction, it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject;

(iii) that the imposition of the same discipline by this court would result in grave injustice; or

(iv) that the misconduct is deemed by this court to warrant substantially different discipline.

Where this court determines that any of these elements exists, it will enter another order as it deems appropriate.

(E) Misconduct Established. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct establishes the misconduct conclusively for purposes of disciplinary proceedings in United States courts.

(F) Appointment of a Prosecutor. This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(3) Disbarment on Consent or Resignation in Other Courts.

(A) Disbarment in this Court. Any bar member of this court who is disbarred or resigns from the Bar of another federal court or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, will be disbarred from this court and stricken from the attorney roll, upon filing with this court a certified copy of the judgment or order accepting the disbarment or resignation.

(B) Duty to Notify. Any attorney admitted to practice before this court must, upon being disbarred on consent or resigning from the Bar of any other federal court or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

(4) Standards for Professional Conduct.

(A) Disciplinary Action. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to this court may be disbarred, suspended from practice before this court, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

(B) Misconduct Defined. Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility or Rules of Professional Conduct adopted by this court, constitute misconduct and are grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility or Rules of Professional Conduct adopted by this court is the Code of Professional Responsibility or Rules of Professional Conduct adopted by the highest court of the state in which this court sits, as amended from time to time by that state court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of Bar Associations within the state and other interested parties.

(5) Disciplinary Proceedings.

(A) Referral for Investigation. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney

admitted to practice before this court come to the attention of a judge of this court, by whatever means, and the applicable procedure is not otherwise mandated by these Rules, the judge may refer the matter to appropriate counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of another appropriate recommendation.

(B) No Proceeding Initiated. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney — because of insufficient evidence, another pending proceeding whose disposition may effect the instant matter, or any other valid reason — counsel must file a recommendation for disposition, whether by dismissal, admonition, deferral, or otherwise, setting forth their reasons.

(C) Order to Show Cause. To initiate formal disciplinary proceedings, counsel must obtain a court order upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of the order, personally or by mail, why the attorney should not be disciplined. The order to show cause must include the form certification of all courts before which the respondent-attorney is admitted to practice, as specified in the form following this rule.

(D) Hearing. When the respondent-attorney answers the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this court will set the matter for prompt hearing before one or more judges of this court; provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this court, the hearing must be conducted before a panel of three other judges of this court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge is the complainant, by the chief judge of the court of appeals for this circuit. The respondent-attorney must execute the certification

of all courts before which he or she is admitted to practice, in the form specified, and file the certification with his or her answer.

(6) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(A) Affidavit Required. Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, an allegation of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(i) the attorney's consent is freely and voluntarily rendered; the attorney is not being subject to coercion or duress; the attorney is fully aware of the implications of so consenting;

(ii) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney must specifically set forth;

(iii) the attorney acknowledges that the material facts so alleged are true; and

(iv) the attorney consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully be defended.

(B) Order of Disbarment. Upon receipt of the required affidavit, this court will enter an order disbarring the attorney.

(C) Public Record. The order disbarring the attorney on consent is a public record. However, the affidavit required above at (A) must not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(7) Reinstatement.

(A) After Disbarment or Suspension. An attorney suspended for 3 months or less is automatically reinstated at the end of the period of suspension upon filing with the court an affidavit of compliance with the provisions of the order. An attorney suspended for more than 3 months or disbarred cannot resume practice until reinstated by order of this court.

(B) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent cannot apply for reinstatement until the expiration of at least 5 years from the effective date of the disbarment.

(C) Hearing on Application. A petition for reinstatement must be filed with the chief judge of this court. When received, the chief judge will promptly refer the petition to counsel and set the matter for prompt hearing before one or more judges of this court. If a judge of this court was the complainant, the hearing will be conducted before a panel of three other judges of this court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge was the complainant, by the chief judge of the court of appeals for this circuit. The assigned judge or judges must, within 30 days after referral, schedule a hearing at which the petitioner has the burden of demonstrating by clear and convincing evidence that he/she has the moral qualifications, competency, and learning in the law required for admission to practice law before this court and that resumption of the practice of law will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

(D) Duty of Counsel. In all proceedings on a petition for reinstatement, cross-examination of the respondent-attorney's witnesses, and the submission of any evidence in opposition to the petition must be conducted by counsel.

(E) Deposit for Costs of Proceeding. Petitions for reinstatement must be accompanied by an advance deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(F) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition will be dismissed. If found fit to resume the practice of law, the judgment will reinstate the petitioner, provided that payment of all or part of the costs of the proceedings has been made as specified by the court and on making partial or complete restitution to parties harmed by the petitioner. Provided further, that if the petitioner has been suspended or disbarred for 5 years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the Bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(G) Successive Petitions. A petition for reinstatement must be filed at least 1 year after an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(8) Attorneys Specially Admitted. Whenever an attorney applies or is admitted to this court *pro hac vice,* the attorney is deemed to confer disciplinary jurisdiction upon this court for the duration of the special admission.

(9) Service of Papers and Other Notices. Service of an order to show cause instituting a formal disciplinary proceeding must be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address filed with the court. Service of any other paper or notice required by these Rules is deemed made if such paper or notice is addressed to the respondent-attorney at the last address recorded with the court or to counsel of the

respondent-attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

(10) Appointment of Counsel. Whenever counsel is to be appointed to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court will appoint as counsel the disciplinary agency of the highest court of the State of Vermont. If the attorney maintains his or her principal office in another state, a disciplinary agency having jurisdiction will be appointed. If no such disciplinary agency exists or if that agency declines appointment, or the appointment is clearly inappropriate, this court will appoint as counsel one or more members of the Bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these Rules. The respondent-attorney may move to disqualify an appointed attorney who is or has been an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless allowed by this court.

(11) Duties of the Clerk.

(A) Copy of Conviction Order. When informed that an attorney admitted to practice before this court has been convicted of any crime, the clerk of court must determine whether a certificate of conviction has been received in this court. If not, the clerk of court must promptly obtain a certificate and file it with this court.

(B) Copy of Disciplinary Order. When informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the clerk of court must determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed in this court. If not, the clerk must promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

(C) Notification of Other Courts. Whenever it appears that any person convicted of any crime or

disciplined by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk of court must, within 10 days of the conviction or discipline, transmit to the disciplinary authority in the other jurisdiction, a certificate of the conviction or a certified exemplified copy of the judgment or disciplinary order, as well as the last known office and residential address of the defendant or respondent.

(D) Notification of ABA. The clerk of court must also promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

(12) Jurisdiction. Nothing contained in these Rules denies this court necessary powers to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Fed. R. Crim. P. 42.

(e) Law Student Internship and Law Clerk Practice.

(1) Requirements to Appear. An eligible law student intern or graduate of an approved law school may appear on behalf of a party if they:

(A) register as a law clerk under the requirements of the Vermont Supreme Court Rules on Admission to the Bar;

(B) are under supervision of a member of the Bar of this court; and

(C) have written consent from the party being represented.

(2) Supervising Attorney. The attorney who supervises an intern or law clerk must:

(A) be a member of the Bar of the United States District Court for the District of Vermont or of the Bar of the United States District Court for the

district in which the law school the intern attends is located;

(B) assume personal professional responsibility for the intern's or law clerk's work;

(C) assist the intern or law clerk to the extent necessary;

(D) introduce the intern or law clerk to the court at his or her first appearance and appear with him or her at all subsequent court appearances unless his or her presence is waived by the court;

(E) give written consent to supervise the intern or law clerk under these Rules; and

(F) notify the court in writing when the intern or law clerk's eligibility has terminated under the provisions of subsection (6) below.

(3) Law Student Intern Requirements. To appear pursuant to these Rules, the law student intern must:

(A) be enrolled in good standing in a law school approved by the American Bar Association;

(B) have completed legal studies amounting to at least 2 semesters of credit, or the equivalent, in a law school approved by the American Bar Association; and

(C) not be employed or compensated by a client. This Rule does not prevent an attorney, legal aid bureau, law school, public defender, or other agency from compensating a law student intern.

(4) Law Clerk Requirements. To appear pursuant to these Rules, a law clerk must:

(A) be a graduate of a law school approved by the American Bar Association and be in the process of completing the clerkship law study requirements of the Vermont Supreme Court Rules on admission to the Bar; *or*

(B) have completed legal clerkship and studies amounting to at least 3 years pursuant to the Vermont Supreme Court Rules on Admission to the Bar under the supervision of a member in good standing of the Bar of the State of Vermont;

(C) not be employed or compensated by a client. This Rule does not prevent an attorney, legal aid bureau, law school, public defender, or other agency from compensating a law clerk; and

(D) in the case of law clerks as described at subsection (e)(4)(B) above, appear only in matters involving Titles 2 and 16 of the Social Security Act as amended.

(5) Eligible Duties. The law student intern or law clerk supervised in accordance with these Rules may:

(A) appear as counsel in court or at other proceedings when the written consent of the client and supervising attorney referred to above at subsections (e)(1) and (2) has been filed, and the court has approved the intern's or law clerk's request to appear; and

(B) prepare and sign motions, petitions, answers, briefs and other documents in connection with any matter in which he or she has met the conditions of subsection (5)(A) above. Each filed document must also be signed by the supervising attorney.

(6) One Year Limit. A law clerk approved to appear under these Rules is not eligible for that approval for more than 1 year after he or she has graduated from an approved law school or pursued legal studies for 4 years in Vermont under the supervision of a practicing Vermont attorney as required under Vermont Supreme Court Rules, 12 V.S.A. app. I, pt. II, § 6(g)(1) (Supp. 1984).

83.3 Appearances

(a) By Individuals. Parties appearing *pro se* or in one's own behalf must appear personally, declaring their *pro se* status in

their initial filing or in a Notice of Appearance. A party appearing *pro se* may not authorize another person not a member of this court's Bar to appear on their behalf. The words *"pro se*" must follow a party's signature on all filings made in a case.

(b) By Corporations. A corporation or unincorporated association cannot appear *pro se* in any action or proceeding.

(c) Change of Address. An attorney or *pro se* party appearing before the court is under a continuing duty to notify the court of any change of address and telephone number.

(d) Withdrawal of Counsel. Counsel will not be permitted to withdraw until replacement counsel has entered an appearance or a party has declared his or her *pro se* status pursuant to section (a) above and the court has granted the motion to withdraw.

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DECLARATION OF ADMISSIONS TO PRACTICE

Disciplinary No._____

In Re_____

I,_____, am the attorney who has been served with an order to show cause why disciplinary action should not be taken in the above captioned matter.

I am a member of the bar of this court.

I have been admitted to practice before the following state and federal courts, in the years, and under the license record numbers shown below:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____

_____
(Signature)

_____
(Full name - typed or printed)

_____

_____
(Address of Record)

This declaration must be signed, and delivered to the court with the attorney's answer to the order to show cause or any waiver of an answer. Failure to return this declaration may subject an attorney to further disciplinary action. Under 28 U.S.C. § 1746, this declaration under penalty of perjury has the same force and effect as a sworn declaration made under oath.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

_____ Plaintiff(s),	)	
	)	
v.	)	Case No.
	)	
_____ Defendant(s).	)	

NOTICE OF *PRO SE* APPEARANCE

I, _____, a Plaintiff/Defendant in the above-captioned matter, hereby enter my appearance as a *pro se* party. I understand that I am responsible for notifying the court of any changes to my mailing address as well as any change in my status should I obtain representation by an attorney in the future.

All court papers may be mailed to me by first class mail at the address shown below. Pursuant to Fed. R. Civ. P. 5(d), I also realize that I am responsible for serving upon all parties who appear in the action, a copy of every paper which I file in this proceeding, along with a Certificate of Service which attests to this fact.

My Street Address is:

_____

_____
Town/City State Zip Code

_____
Telephone Number (daytime)

_____
Date

My Mailing Address is:

_____

_____
Town/City State Zip Code

_____
Telephone Number (evening)

_____
Signature

83.4 Removal Cases

(a) Filing. A Notice of Removal must be accompanied by the state court documents required by 28 U.S.C. § 1446; a $350 filing fee payable to "Clerk, U.S. District Court" and a completed JS-44 civil cover sheet.

(b) State Court Record. When a removal action is filed, the Clerk's Office requests the complete file from the state court, instructing it to bill the removing attorney for any associated costs. Upon receipt of the state court file, the documents are reentered to the federal case.

(c) Deadlines.

(1) Answer. Any answer(s) not previously filed in state court are due within the time allowed under Federal Rule of Civil Procedure 12(a), calculated from the date of service of the summons and complaint.

(2) Other Deadlines. For purposes of calculating any time periods related to documents filed in state court, those papers are considered filed in federal court on the date the state court file is received. Documents filed in state court do not need to be re-filed.

(3) Subsequent Procedures. After the date the notice of removal is filed, all other matters in the case proceed under these Local Rules and the Federal Rules of Civil Procedure.

83.5 Security

(a) Courthouse Security.

(1) Screening and Search. All persons entering a federal courthouse in this district and all items carried by them are subject to appropriate screening and search by a United States Marshal, or any law enforcement officer. Persons may be requested to provide identification and to state the nature of their business in the courthouse. Anyone refusing to cooperate with these security measures may be denied entrance to the courthouse.

(2) Prohibitions. The taking of photographs and the use of any broadcasting equipment within any federal courthouse are prohibited, except with permission of the court. This prohibition shall not apply to non-court federal agency tenants within their space. When necessary, tenants will coordinate use of any such equipment with the United States Marshals Service.

(b) Courtroom Security.

(1) Weapons Prohibited. No weapons are permitted in any courtroom, except in the following circumstances:

(A) when carried by United States Marshals Service personnel, or persons specifically authorized by the United States Marshal; or

(B) when they are used as exhibits. Before introduction as an exhibit the custodian of the weapon must render the weapon inoperative and present it for a safety check by United States Marshals Service personnel.

(2) Other Equipment Prohibited. Cameras, video cameras, recording equipment, dictaphones, pagers, cellular phones, and computers are prohibited in all courtrooms, except with permission of the court.

(c) Grand Jury Security. The secrecy of grand jury proceedings is a matter of preeminent concern. When a grand jury is convened, the surrounding area is restricted to law enforcement officers, involved attorneys, witnesses, and employees and customers of agencies on the premises. The United States Marshals Service may secure the floor of the grand jury session as necessary to preserve the secrecy of the grand jury and protect witnesses from any unwanted interference.

83.6 Pending Matters in Stayed Cases

When the court grants a stay, it may administratively terminate any pending motions without prejudice.

83.7 Sealed Documents

(a) Order Required. All official files in the possession of the court are considered to be public documents available for inspection unless otherwise ordered. Cases or documents cannot be permanently sealed without a court order.

(b) Filing Procedure. To request that a document be sealed, a separate Motion to Seal must accompany the specific document to be sealed.

(c) Documents Filed Under Protective Order. Any party filing a prospectively-sealed document must place the document in a sealed envelope and affix a copy of the document's cover page (with confidential information deleted) to the outside of the envelope. The party must designate the envelope with a conspicuous notation such as "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(d) Confidential and Sensitive Information. Counsel and parties to litigation are reminded of their responsibility for redacting confidential and sensitive information prior to filing documents with the court. Refer to L.R. 5.1(d).

83.8 Bankruptcy Appeals and Related Procedures

(a) Bankruptcy Appeals.

(1) Bankruptcy Appellate Panel (BAP). Bankruptcy Appellate Panel service within the Second Circuit Court of Appeals was abolished effective June 30, 2000. As such, all appeals involving final judgment of the bankruptcy court, all final bankruptcy orders and decrees, including interlocutory orders or decrees, shall be referred to and be heard by the district court.

(2) Appeals from Final Judgment, Order, or Decree.

(A) Filing. A bankruptcy appeal is begun by filing a notice of appeal with the bankruptcy clerk within 10 calendar days after a final judgment, order or decree of the bankruptcy court. A $255 fee ($5 for the notice of appeal and a $250 filing fee) must

accompany the notice of appeal. Each notice of appeal requires a separate fee.

(B) Designation of Record. Within 10 calendar days after filing a notice of appeal, the appellant must file with the *bankruptcy* court clerk a designation of items to be included in the record on appeal and a statement of the issues. Any appellee's designation of additional items to be included in the record on appeal must be filed within 10 calendar days after service of the appellant's statement.

(C) Record on Appeal. The party designating the item(s) to be included must provide to the bankruptcy clerk a copy of the items designated. The bankruptcy clerk is responsible only for assembling the record. Pursuant to Fed. R. Bankr. P. 8006, the bankruptcy court clerk must prepare a copy*, at the expense of the party*, whenever a party *fails to provide* a designated item. Parties intending to have the bankruptcy court clerk prepare any designated copies must so advise in writing, and provide prepayment to, the bankruptcy court clerk.

(D) Record Transmitted. Within 30 calendar days after the designation is filed, the bankruptcy court clerk must transmit copies of the following items to the district court:

(i) the notice of appeal;

(ii) the judgment, order, or decree appealed from;

(iii) any opinion, findings of fact and conclusions of law of the bankruptcy court.;

(iv) items designated by the parties; and

(v) a certified copy of the bankruptcy docket sheet entries, and shall also notify parties to the action of same.

(E) Requirement. Pursuant to Fed. R. Bankr. P. 8006, parties are expressly required to take any action necessary to enable the bankruptcy court clerk to assemble and transmit the record. Failure to comply with this provision may result in dismissal of the appeal or other appropriate action, at the discretion of the district court judge. Failure to comply may include, but is not limited to, failing to provide all copies of designated items or failure to notify or prepay the bankruptcy court clerk for copy or filing fees.

(F) Brief Deadlines. Once the record on appeal is filed in the district court, the appellant's brief must be filed at the *district* court within 15 days. The appellee's brief must be filed within 15 days after service of the appellant's brief, and the appellant's reply brief must be filed within 10 days of service of the appellee's brief.

(G) No Oral Argument. The district court ruling is made on the pleadings unless a motion for oral argument is made to, and granted by, the presiding judge.

(H) Judgment. When judgment is entered by the district court, the clerk must transmit a copy of any opinion or order respecting judgment to each party, to the United States Trustee, and to the bankruptcy court clerk. Unless otherwise ordered by the district court, judgments of the district court are stayed automatically until the expiration of 10 days after entry.

(3) Motions for Leave to Appeal (Interlocutory Appeals).

(A) Filing. A motion for leave to appeal is filed with the *bankruptcy* court clerk and must be accompanied by the notice of appeal. The motion must be accompanied by a $5 filing fee.

(B) Opposition and Transmission. Any opposition by an adverse party must be filed within 10 calendar days of service of the motion. When the 10 calendar days expires, the bankruptcy court clerk

transmits the motion for leave, notice of appeal, and any oppositions to the district court.

(C) If Granted. If the motion is granted, an additional $250 fee must be paid to the *bankruptcy* court clerk. The bankruptcy appeal will then proceed as described in subsection (a)(2) above.

(4) Motions for Stay Pending Appeal. Motions for stay of a judgment, order or decree of the bankruptcy court must be presented to the *bankruptcy* judge first. If denied there, the motion — accompanied by a certified copy of the bankruptcy opinion or order denying relief — may be filed with the district court as a miscellaneous action. No filing fee is charged by the district court. However, pursuant to Fed. R. Bankr. P. 8005, the district court may condition the grant of relief on the filing of a bond or other appropriate security.

(b) Bankruptcy Related Procedures.

(1) Withdrawal of Reference.

(A) Filing. A motion for withdrawal of any case or any part of any case referred to the bankruptcy judge must be filed with the *bankruptcy* court clerk accompanied by a $150 filing fee. All such motions for withdrawal must contain a clear and conspicuous statement that the party is seeking relief from the district court.

(B) Opposition. Opposition must be filed within 10 calendar days after service of the motion, and any reply by the movant must be filed within 10 calendar days after the opposition is served.

(C) Transmission to District Court. When the 10 calendar days expire, the bankruptcy court clerk transmits the motion for withdrawal and any opposition to the district court clerk, who must acknowledge receipt.

(D) District Court Assignment. The matter will be assigned to a district judge in accordance with the court's usual system of assigning civil cases.

Contested motions for withdrawal are assigned a civil case number while uncontested motions for withdrawal are assigned a miscellaneous case number.

(E) Notification. The district court clerk must notify the bankruptcy court clerk of the case number and judicial officer assigned.

(2) Core and Non-Core Bankruptcy Proceedings.

(A) Core Defined. Title 28 U.S.C. § 157 distinguishes between "core" and "non-core" bankruptcy proceedings. "Core" proceedings are those which are inherent in or fundamental to the administration of a bankruptcy estate, arise under Title 11 U.S.C., and may be heard by the bankruptcy judge for the purpose of making a final determination.

(B) Non-Core Defined. "Non-core" proceedings cannot be determined by a bankruptcy judge. Non-core proceedings are heard by the bankruptcy judge who must submit proposed findings of fact and conclusions of law. Those are transmitted by the bankruptcy court clerk to the district court clerk for review by a district judge. The district court judge must consider any properly filed objections and make a final determination. This procedure also applies to orders of contempt issued by a bankruptcy judge pursuant to Fed. R. Bankr. P. 9020.

(3) Registration of Judgment from Bankruptcy Court. Pursuant to Fed. R. Bankr. P. 5003(c), a bankruptcy court judgment may be registered in either the district *or* bankruptcy court for purposes of enforcement.

83.9 Judicial Misconduct

Complaints alleging judicial misconduct or disability are governed by the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c) and by the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability. Copies of these rules and required complaint forms are available from the Clerk, U.S.

Court of Appeals for the Second Circuit, Room 1702 U.S. Courthouse, 40 Foley Square, New York, New York, 10007. Completed complaint forms must be filed at the same address.

83.10 Schedule of Additional Fees

The Judicial Conference of the United States, acting under the authority of 28 U.S.C. § 1914(b) has prescribed the following schedule of fees for United States District Courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4 and 5 when the item or service requested is available through electronic access. No fees under this schedule are to be charged to federal agencies which are funded from judiciary appropriations, including individuals providing services pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A.

(1) For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, **$39.00.** This fee is applicable to the filing of a petition to perpetuate testimony, Fed. R. Civ. P. 27(a), the filing of papers by trustees under 28 U.S.C. § 754, the filing of letters rogatory or letters of request, and the registering of a judgment from another district pursuant to 28 U.S.C. § 1963.

(2) For every search of the records of the district court conducted by the clerk of the district court or a deputy clerk, **$26.00** per name or item searched. This fee shall apply to services rendered on behalf of the United States *if* the information requested is available through electronic access.

(3) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, **$9.00**. For exemplification of any document or paper, **$18.00**.

(4) For reproducing any record or paper, **$0. 50** per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of recordings of proceedings, regardless of the medium, **$26.00** including the cost of materials.

(6) For each microfiche sheet or film copy of any court record, where available, **$5.00.**

(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, **$45.00.**

(8) For a check paid into the court which is returned for lack of funds, **$45.00.**

(9) For appeal of a judgment of conviction on a misdemeanor case before a magistrate judge to a district judge, **$32.00.**

(10) For admission of an attorney to practice before the Bar of this court, **$150.00**, including the issuance of a certificate of admission. For a duplicate certificate of admission or certificate of good standing, **$15.00**. For admission *pro hac vice* to a specific case or proceeding, **$150.00**, of which the funds will be credited to a special non-appropriated fund account to be used to benefit the bench and Bar of this court and to meet other extraordinary expenses of the court as authorized by the judges thereof from time to time.

(11) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(12) The clerk shall assess a charge for handling Registry funds deposited with the court to be assessed from interest earnings in accordance with a detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) For usage of electronic access to court data via a federal Judiciary internet site, **$.08** per page, with a total fee for any one document not to exceed thirty pages. The court may upon good cause shown, exempt persons or classes of people from the fee in order to avoid unreasonable burden and to promote public access to electronic information.

(14) For printing copies of any record or document accessed electronically at a public terminal at a courthouse, **$.10** per page.

83.11 Collateral Forfeiture Procedure

Forfeiture of collateral in lieu of appearance is in accordance with the procedures below:

(a) **By Consent**. A person charged with a misdemeanor as defined in 18 U.S.C. § 3559, may, in suitable types of cases, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States Magistrate Judge, and consent to the forfeiture of collateral. Pursuant to LR 72.1, United States Magistrate Judges within and for the District of Vermont are authorized to accept payment of sums fixed from time to time by order of the court in lieu of appearance, which sums when paid shall terminate the proceeding.

(b) **Complete Schedule.** The offenses for which collateral may be posted and forfeited in lieu of appearance by the person charged are on file and available for inspection at the Clerk's Office.

(c) **Punishment.** If a person charged with an offense as specified by the Collateral Forfeiture Schedule currently in effect (See (e) below) fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation may be imposed within the limits established by law upon conviction or after trial.

(d) **Appearance May Be Required.** If, within the discretion of the law enforcement officer, the offense is of an aggravated nature, the law enforcement officer may require appearance and any punishment, including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction or after trial. Those offenses for which no amount of collateral is shown require a mandatory appearance before a United States Magistrate Judge.

(e) **Possible Arrest.** Nothing in this Rule or the Collateral Forfeiture Schedule in effect, shall prohibit a law enforcement officer from arresting a person for committing any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States Magistrate Judge or, upon arrest, taking the person immediately before a United States Magistrate Judge.

83.12 Certification of Questions of State Law

(a) Authorization. When authorized by state law, the court may certify to the highest court of a state an unsettled and significant question of state law that will control the outcome of a pending case.

(b) Procedure. Such a question may be certified by the court on its own motion or on motion of a party filed with the clerk of this court. Certification will be conducted in accordance with procedures adopted for that purpose in the state by legislation or rule of court.

(c) Stay. The court may grant a stay pending the state court's decision whether to accept the certified question and its decision of the certified question.

XII. CRIMINAL RULES

1.1 Applicability of Rules of Civil Procedure

The Local Rules of Civil Procedure of the District of Vermont and the Federal Rules of Civil Procedure, insofar as they are applicable directly or by analogy, govern criminal procedures unless they conflict with any statute of the United States, or with any Federal Rule of Criminal Procedure at any time legally adopted, in which event such statute or Rule at all times prevails. These Local Rules supplement the Federal Rules of Criminal Procedure.

16.1 Discovery

Effective January 1, 2005, L.Cr.R. 16.1 is hereby amended as shown below. At the time of arraignment, the court will issue a standard Criminal Pretrial Order which sets forth the criminal discovery procedures adopted by this district. The order shall be issued to all parties to the case. A sample pretrial order is appended to this rule.

(a) Discovery from Government. Within 14 days of arraignment, or on a date otherwise set by the court for good cause shown, the government will make available to the defendant for inspection and copying the following:

(1) Fed. R. Crim. P. 16(a) and Fed. R. Crim. P. 12(d) Information. All discoverable information within the scope of Rule 16(a) of the Federal Rules of Criminal Procedure and a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.

(2) Brady Material. All information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment, within the scope of Brady v. Maryland, 373 U.S. 83 (1963).

(3) Names and Addresses of Witnesses. A list of the names and addresses of all witnesses the government intends to call in its case in chief at trial. If the government has substantial concerns about witness safety or intimidation,

it may withhold the names and addresses of those witnesses about whom it has substantial concerns. In the event names and/or addresses are withheld, the government must provide the defense with notice of the number of witnesses' names and/or addresses that are so withheld.

(4) Search Warrant Documents and Things. All warrants, applications with supporting affidavits, testimony under oath, returns and inventories for search and/or seizure of the defendant's person, property, or items with respect to which the defendant may have standing to move to suppress.

(5) Electronic Surveillance Documents and Things. Notice of any electronic surveillance conducted pursuant to 18 U.S.C. Chapter 119 that the defendant may have standing to move to suppress; all authorizations, applications, orders, returns, inventories, logs, transcripts, and recordings obtained pursuant to such surveillance.

(b) Discovery from Defendant. Unless a defendant, in writing within 5 days of arraignment, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant, within 21 days of arraignment, shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b). The defendant shall also make available to the government the names, addresses and dates of birth of all witnesses it plans to call in its case in chief.

(c) Notice Required of Defendant. Within 21 days of arraignment, the defendant shall provide written notice as required pursuant to Fed. R. Crim. P. 12.1, 12.2, and 12.3.

(d) Government Pretrial Disclosures. Not less than 14 days prior to the start of jury selection, or on a date otherwise set by the court for good cause shown, the government shall provide to the defendant:

(1) Giglio Material. All material within the scope of United States v. Giglio, 405 U.S. 150 (1972), including but not limited to the following:

(A) the existence and substance of any payments, promises of immunity, leniency, preferential treatment or other inducements made to any witness who will be testifying;

(B) the substance of substantially inconsistent statements that a witness has made concerning issues material to guilt or punishment; and

(C) any criminal convictions of a witness or other instances of misconduct, of which the government has knowledge and which may be used to impeach a witness pursuant to Fed. R. Evid. 608 and 609.

(2) Federal Rule of Evidence 404(b) Notice. The government shall advise the defendant of its intention to introduce Rule 404(b) evidence in its case in chief at trial. This requirement shall replace the defendant's duty to demand such notice.

(e) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material required to be provided or disclosed pursuant to this Rule, such party shall promptly notify opposing counsel of the existence of the additional evidence or material and provide access to the evidence or material for inspection and copying.

(f) Discovery Motions. No attorney shall file a discovery motion or a request for a bill of particulars (except a motion pursuant to Fed. R. Crim. P. 16(d)(1)) without first conferring with opposing counsel, and no motion will be considered by the court unless it is accompanied by a certification of such conference stating the date, time and place of the conference and the names of all participating parties.

(g) Motions to Continue. No continuance or extension will be granted under the Speedy Trial Act unless a motion or stipulation is submitted which recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the motion or stipulation must set forth the following:

(1) the facts upon which the court can make a finding which would warrant the granting of the relief requested; and

(2) a statement that defendant recognizes that any additional time granted will be excluded from computation under the Speedy Trial Act.

Counsel must also submit a proposed order setting forth the time to be excluded and the basis for the exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order must have a space for the court to enter a new trial date in accordance with the excludable time period. Requests for continuance or extension which do not comply with this rule will be disallowed by the court.

(h) Pretrial Filing and Stipulation Requirements. Within three days of the date fixed for trial, counsel for each party shall:

(1) exchange and file with the court *voir dire* requests;

(2) exchange and file with the court requests to charge without prejudice to the parties' right to submit additional requests at the conclusion of the evidence, the need for which was not apparent prior to trial;

(3) make every effort to enter into stipulations of fact, including stipulations as to the admissibility of evidence, thereby limiting the matters which are required to be tried; and

(4) exchange and file with the court a proposed exhibit list (government to label exhibits numerically, i.e., Govt. 1, 2, 3 etc.; defendant to label exhibits alphabetically, i.e., Deft. A, B, C, etc.). See L.R. 16.2

(i) Sentencing Discovery. On the day objections to the draft presentence report are to be submitted, the government and defendant shall exchange:

(1) the names and addresses of witnesses who have not previously been disclosed and who will be called at the sentencing hearing, including the names and addresses of experts. The defendant shall provide the dates of birth of such witnesses. The government shall provide the criminal records, if any, of such witnesses.

(2) all information within the scope of Fed. R. Crim. P. 16(a) and (b) which has not previously been disclosed and which relates to issues to be raised at the sentencing hearing.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Case No.
	)	
	)	
DEFENDANT	)	

CRIMINAL PRETRIAL ORDER

I. NOTICE TO ALL COUNSEL:

Counsel for the defendant is directed to file a notice of appearance with the Clerk of the Court stating his/her mailing address and telephone number.

II. DISCOVERY:

A. Discovery from Government. Within 14 days of arraignment, or on a date otherwise set by the Court for good cause shown, the government shall make available to the defendant for inspection and copying the following:

1. Fed. R. Crim. P. 16(a) and Fed. R. Crim. P. 12(d) Information. All discoverable information within the scope of Fed. R. Crim. P. 16(a), and a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.

2. Brady Material. All information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment, within the scope of Brady v. Maryland, 373 U.S. 83 (1963).

3. Names and Addresses of Witnesses. A list of the names and addresses of all witnesses the government intends to call in its case in chief at trial. If the government has substantial concerns about witness safety or intimidation, it may withhold the names and addresses of those witnesses about whom it has substantial concerns. In the event names and/or addresses are withheld, the government must provide the defense with notice of the number of witnesses' names and/or addresses that are so withheld.

4. Search Warrant Documents and Things. All warrants, applications with supporting affidavits, testimony under oath, returns and inventories for search and/or seizure of the defendant's person, property, or items with respect to which the defendant may have standing to move to suppress.

5. Electronic Surveillance Documents and Things. Notice of any electronic surveillance conducted pursuant to 18 U.S.C. Chapter 119 that the defendant may have standing to move to suppress; all authorizations, applications, orders, returns, inventories, logs, transcripts, and recordings obtained pursuant to such surveillance.

B. Discovery from Defendant. Unless a defendant, in writing within five days of arraignment, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant, within 21 days of arraignment, shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b). The defendant shall also make available to the government the names, addresses and dates of birth of all witnesses it plans to call in its case in chief.

C. Notice Required of Defendant. Within 21 days of arraignment, the defendant shall provide written notice as required pursuant to Fed. R. Crim. P. 12.1, 12.2, and 12.3.

D. Government Pretrial Disclosures. Not less than 14 days prior to the start of jury selection, or on a date otherwise set by the Court for good cause shown, the government shall provide to the defendant:

1. Giglio Material. All material within the scope of United States v. Giglio, 405 U.S. 150 (1972), including but not limited to the following:

a. The existence and substance of any payments, promises of immunity, leniency, preferential treatment or other inducements made to any witness who will be testifying;

b. The substance of substantially inconsistent statements that a witness has made concerning issues material to guilt or punishment;

c. Any criminal convictions of a witness or other instances of misconduct, of which the government has knowledge and which may be used to impeach a witness pursuant to Fed. R. Evid. 608 and 609.

2. Federal Rule of Evidence 404(b) Notice. The government shall advise the defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal

Rules of Evidence. This requirement shall replace the defendant's duty to demand such notice.

E. Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material required to be provided or disclosed pursuant to this Order, such party shall promptly notify opposing counsel of the existence of the additional evidence or material and provide access to the evidence or material for inspection and copying.

F. Discovery Motions. No attorney shall file a discovery motion or a request for a bill of particulars (except a motion pursuant to Fed. R. Crim. P. 16(d)(1)) without first conferring with opposing counsel, and no motion will be considered by the Court unless it is accompanied by a certification of such conference stating the date, time and place of the conference and the names of all participating parties.

III. MOTIONS:

Upon the request of the defendant, motions are to be filed by _____.

Parties are advised that there will be no extensions except for extraordinary circumstances. In such an event, the United States Attorney and defense counsel are hereby notified that no continuance or extension will be granted under the Speedy Trial Act unless a motion or stipulation is submitted which recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the motion or stipulation must set forth the following:

A. The facts upon which the Court can make a finding which would warrant the granting of the relief requested; and

B. A statement that defendant recognizes that any additional time granted will be excluded from computation under the Speedy Trial Act.

Counsel must also submit a proposed order setting forth the time to be excluded and the basis for the exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order must have a space for the Court to enter a new trial date in accordance with the excludable time period. Requests for continuance or extension which do not comply with this Order will be disallowed by the Court.

If no motions are filed, a pretrial conference will be noticed before the Honorable _____following the motions-filing deadline on _____.

IV. SPEEDY TRIAL REQUIREMENTS:

Pursuant to 18 U.S.C. § 3161(h)(8)(A), the Court finds, based on consultation between the parties concerning the complexity of the case and the need for the defense to review discovery, that the ends of justice are best served by granting an extension of time and outweigh the best interests of the defendant and the public to a speedy trial. Denial of this extension of time would deprive counsel for the defendant and the attorney for the government reasonable time necessary for the effective preparation of the case.

IT IS FURTHER ORDERED that the period of delay resulting from this extension of time shall be excludable in computing the time in which the trial in this case must commence pursuant to the Speedy Trial Act and this District's Plan for the Prompt Disposition of Criminal Cases. The time to be excluded as directed above shall commence on the date of arraignment and continue through the motions-filing deadline. THIS ORDER SHALL APPLY TO ALL CO-DEFENDANTS IN THIS CASE.

V. JURY DRAW DATE:

This case should appear for jury draw on the next available trial calendar after the pretrial conference before the Honorable _____.

VI. SUBMISSIONS REQUIRED:

Within three days of the date fixed for trial, counsel for each party shall:

A. Exchange and file with the Court *voir dire* requests;

B. Exchange and file with the Court requests to charge, without prejudice to the parties' right to submit additional requests at the conclusion of the taking of evidence, the need for which was not apparent prior to trial;

C. Make every effort to enter into stipulations of fact, including stipulations as to the admissibility of evidence, thereby limiting the matters which are required to be tried; and

D. Exchange and file with the Court a proposed exhibit list (the Government to label exhibits numerically, i.e., Govt's. 1, 2, 3 etc.; the defendant to label exhibits alphabetically, i.e., Deft's. A, B, C, etc.).

VII. SENTENCING DISCOVERY:

On the day objections to the draft presentence report are to be submitted, the government and the defendant shall turn over:

A. The names and addresses of witnesses who have not previously been disclosed and who will be called at the sentencing hearing, including the names and addresses of experts. The defendant shall provide the dates of birth of such witnesses. The Government shall provide the criminal records, if any, of such witnesses.

B. All information within the scope of Fed. R. Crim. P. 16(a) and (b) which has not previously been disclosed and which relates to issues to be raised at the sentencing hearing.

SO ORDERED.

Dated at _____, in the District of Vermont, this ___ day of _____, 200_.

_____
U.S. District/Magistrate Judge

32.2 Sentencing Procedures

(a) Generally. Sentencing shall occur without unnecessary delay after a plea or finding of guilty or nolo contendere. Sentencing shall occur pursuant to Fed. R. Crim. P. 32 and the procedural and scheduling orders issued by the court. The time limits prescribed in those orders may be either shortened or lengthened for good cause.

(b) Presentence Investigation and Report. Defense counsel is entitled to attend any interview of the defendant by the probation officer. Defense counsel shall make himself or herself available for an interview when the defendant pleads or is found guilty, but no more than 10 days after the conviction or guilty plea, unless granted an extension by the court. The presentence report remains a confidential court document pursuant to Fed. R. Crim. P. 32.

(c) Disclosure of Presentence Investigation Report. The probation officer must furnish the initial presentence report to government and defense counsel. Defense counsel is responsible for ensuring that the defendant has reviewed and understands the presentence report. Redisclosure of the report is prohibited.

(d) Objections to the Presentence Report. Any party seeking to either dispute or add sentencing factors or facts material to sentencing to the presentence report, must notify the probation officer within the time limits set in the procedural order. If any objections are received, the probation officer should conduct further investigation and make any necessary revisions to the presentence report. The officer may request counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(e) Revised Presentence Report and Addendum. The probation officer must prepare an addendum to the presentence report that identifies unresolved issues raised by counsel, and includes the officer's comments on those issues. The probation officer must provide the revised presentence report and addendum to the court and to counsel in accordance with the procedural order.

(f) Nondisclosure to Parties of Probation Officer's Recommendation. The probation officer's recommendation on the sentence, if any, shall not be disclosed to the parties.

57.1 Disclosure of Pretrial Services, Presentence or Probation Records

(a) Authorized Disclosure. Pretrial service reports, presentence reports, and supervision records are prepared and maintained by the probation officer for the benefit of the court. They are confidential and may be disclosed only in the following circumstances:

(1) if authorization to disclose such information has been granted by the respective sentencing court at its discretion;

(2) if the court determines that a compelling need for disclosure has been demonstrated; or

(3) if there exists explicit authority to disclose such information.

Unless compelling reasons are made known to the court before any hearing, probation officers are not permitted to testify as to the contents of any pretrial services, presentence or other reports requested by the court and prepared in the course of their duties. They are expected to answer any specific inquiries by the court at any hearing but are not to be made the subject of interrogation by either counsel unless directed by the court.

(b) Request for Pretrial Services Information. Pretrial service records are governed by specific confidentiality regulations, which set forth the limited circumstances under which pretrial services information may be disclosed (see L.Cr.R. 57.2(b) & (c)). When a request for disclosure of pretrial services records is made to a probation officer by way of subpoena or other judicial process, the officer must inform the Chief Probation Officer who will follow the regulations approved by the Judicial Conference of the United States and issued under the authority of the Director of the Administrative Office of the U.S. Courts and consult with the Chief Judge (see *The Guide*

to Judiciary Policies and Procedures, Volume I, Chapter 11, Part G.)

(c) Request for Presentence or Probation Record. When a request for disclosure of presentence and probation records is made to a probation officer by way of subpoena or other judicial process, the officer will notify the Chief Probation Officer who will follow the regulations approved by the Judicial Conference of the United States and issued under the authority of the Director of the Administrative Office and consult with the Chief Judge (See *The Guide to Judiciary Policies and Procedures*, Volume I, Chapter 11, Part G.) When a correctional agency makes a request for information on a defendant or an offender who is or has been under supervision, the request must be reviewed by the Chief Probation Officer who may release such information.

(d) Continuing Confidentiality. Any copy of the presentence report and related information necessary to classify a defendant – e.g., psychiatric reports, violation of probation reports, etc. – made available by the court to the U.S. Parole Commission or the Bureau of Prisons remains a confidential court document. The documents must be handled in compliance with the rules and regulations established by the Bureau of Prisons and the U.S. Parole Commission for the safekeeping and disclosure of confidential court/agency documents.

57.2 Pretrial Services

(a) Citation. Pretrial services are performed in the District of Vermont by the Probation Office, supervised by the chief probation officer, pursuant to 18 U.S.C. § 3152 (a).

(b) Confidentiality Regulations. Pretrial service records are confidential court records. The release of information obtained during a pretrial service investigation or supervision is governed by the Pretrial Services Confidentiality Regulations issued by the Director of the Administrative Office of the United States Courts. The confidentiality regulations are issued pursuant to 18 U.S.C. § 3153(c)(2).

(c) Disclosure of Information. Confidentiality of pretrial service information is preserved primarily to promote a candid and

truthful relationship between the defendant and the pretrial service officer in order to obtain complete and accurate information. A pretrial service officer must not disclose pretrial service information, unless authorized by the regulations or ordered by the court for good cause shown. Pursuant to 18 U.S.C. § 3153(c)(3), pretrial service information is not admissible on the issue of guilt in the criminal case unless the prosecution is for a crime committed while in the course of obtaining pretrial release or a prosecution for failure to appear for the instant proceeding for which pretrial services were provided.

(d) Pretrial Interview. Before an initial appearance in court, Pretrial Services attempts to interview each defendant. If the defendant has counsel, Pretrial Services shall attempt to coordinate a joint interview with defendant's counsel. Pretrial Services has a primary obligation to provide information to the court. To that end, if the defendant has no counsel, or counsel cannot attend the interview, Pretrial Services may interview the defendant without counsel present. However, in every case, Pretrial Services must advise the defendant of his/her right to decline interview until counsel is present.

(e) Pretrial Services Report. The pretrial service report must be made available to both defense and government counsel. Counsel must not redisclose the report to other parties, such as agents for the government, family members, or friends of the defendant.

(f) After Hearing. All pretrial service reports must be returned to the pretrial service officer at the conclusion of the hearing.

(g) Disclosure to Probation Officers. Pretrial service information must be made available to probation officers for the purpose of preparing a presentence report, including any amendments or supplements.

(h) Violations of Conditions. Pretrial service officers are required by 18 U.S.C. § 3154 (5) to inform the court and the United States Attorney of apparent violations of pretrial release conditions and to recommend appropriate modification of release conditions. In circumstances other than when immediate revocation is sought, violation reports generally are provided to counsel for the defendant.

(i) Notification by Counsel. Counsel must provide copies of motions to modify conditions of release to the pretrial service officer, as well as to opposing counsel.